

# **Miscellaneous Laws of Nassau County:**

**December 31, 2006**

This compilation includes a selection of local laws that are not consolidated in the County Government Law of Nassau County (Nassau County Charter) or the Nassau County Administrative Code. These laws have been included in this compilation because they were selected for inclusion by the County Attorney when the Miscellaneous Laws were first compiled in 1998, or because the Legislature has since indicated in a particular law that it was to be an addition or amendment to the Miscellaneous Laws. Other unconsolidated local laws may exist that have not been included in this compilation.

## **Warning:**

The annexed is an unofficial copy of a selection of miscellaneous laws of Nassau County, which have been reviewed and edited through December 31, 2006. This is not an official copy of these laws and it may contain errors or omissions. Users are advised to use caution and to ascertain whether the text is correct. Text should be compared for verification to the enacting and amending legislation prior to use. Such legislation can be obtained from the Office of the Clerk of the Legislature.

Users should also be aware that, in addition to these miscellaneous laws, local laws enacted by the County Legislature are codified in the Nassau County Charter (also called the County Government Law of Nassau County) and Nassau County Administrative Code of Nassau County. These are also available on the County website. In addition, there may be local laws that remain unconsolidated in any volume.

The County Legislature also acts by Ordinance and Resolution. Ordinances and Resolutions are not codified, but the proceedings of the Legislature are available through the office of the Clerk of the Legislature and, for recent years, at:  
<http://www.mccinnovations.com/weblink/Browse.aspx>.

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\*So in the original.

\*\* So in original. Probably should read 27.

\*\*\*So in original. Probably should read 31.

\*\*\*\*So in original. Probably should read 60.

## TITLE 1

### ELECTIONS

#### Chapter 1. **A System of Permanent Personal Registration.**

Section 1. The county of Nassau does hereby elect to adopt, for the purpose of the registration of voters for elections within the county of Nassau, the system of permanent personal registration set forth in article fifteen of the election law.

(Local Law No. 7, 1954, in effect December 27, 1954.)

## TITLE 2

### JUDICIARY

#### Chapter 1. **Additional compensation for the judges of the County Court, Family Court, District Court, and Surrogates Court of Nassau County.\***

(Local Law, No. 9, 1974, in effect July 22, 1974, Local Law No. 15, 1973 and Local Law No. 17, 1972, Local Law No. 8, 1974, in effect July 1, 1974, amends Local Law No. 11, 1969, and Local Law No. 2 1967.)

\*(Ed's note. Compensation of Judges and Justice of the Unified Court System now fixed by the State Legislature in Articles 6-A and 7-B of the New York State Judiciary Law, and Ch 881 of the Laws of 1980.)

## TITLE 3

### MUNICIPALITIES

#### Chapter 1. **Assumption of liability of Nassau County for acts committed by the County Clerk.**

Section 1. In pursuance of the provisions of section five hundred thirty-three of the county law, as added by chapter five hundred ninety-six of the laws of nineteen hundred sixty-seven, the county of Nassau hereby assumes the liability of the county clerk of the county of Nassau and the employees of the county clerk's office, and shall save harmless and protect the said county clerk and the said employees from financial loss arising out daily claim, demand, suit or judgment by reason of any alleged negligence of the said county clerk and the said employees, provided such act of negligence was committed in the discharge of their duties and within the scope of their employment.

(Local Law No. 2, 1969, in effect March 1, 1969.)

## **Chapter 2. Nassau County authorized to act as an agent for local authorities for the removal of abandoned vehicles.**

Section 1. The County of Nassau is hereby authorized to act as the agent of local authorities within the county, as defined by the vehicle and traffic law, to take into custody vehicles abandoned within the jurisdiction of such local authorities upon the adoption of a resolution by the legislative body of such local authority authorizing the county of Nassau to act as such agent. The County Executive may direct the police department of the County of Nassau to perform such functions as may be required in pursuance of the authority herein granted.

Section 2. The removal and disposition of all abandoned vehicles by the County, as agent of the local authority, and disposition of any proceeds resulting from the sale of such vehicles shall be governed by the provisions of the vehicle and traffic law and the regulations of the commissioner of motor vehicles.

Section 3. The County Executive is hereby authorized to execute all contracts between the County and the local authorities which may be required to implement this local law.  
(Local Law No. 10, 1973, in effect October 1, 1973)

## **Chapter 3. Legalization of Over-expenditures by Incorporated Village of Sea Cliff.**

Section 1. The Incorporated Village of Sea Cliff, by petition duly verified on January 16, 1962, and filed with the Board of Supervisors, has requested the said Board of Supervisors to legalize and validate certain over-expenditures or obligations which have been incurred against a fund or account in excess of the total amount appropriated or lawfully transferred thereto. Such petition had annexed to it certified copies of a detailed, sworn statement of the Treasurer of the said Incorporated Village of Sea Cliff from which it appears that the aforesaid over-expenditures or obligations have been incurred through inadvertence, mistake or error; and the said petition also had annexed to it certified copies of affidavits and resolutions evidencing the holding of a public hearing in the said Incorporated Village of Sea Cliff, authorizing the presentation of the said petition to the Board of Supervisors of the County of Nassau.

Section 2. In pursuance of Resolution No. 165, 1962 of the Board of Supervisors of the County of Nassau, adopted on the 26th day of March, 1962, the Clerk of the Board was authorized and directed to publish a notice stating the time, place and purpose of a public hearing to be held by the said Board of Supervisors or a standing or special committee thereof, in relation to the said petition, which said time and place were the 16th day of April, 1962, at the Village Hall, Sea Cliff, New York; and directing, further that such notice of hearing was to be published in the Glen Cove Record-Pilot, a newspaper having general circulation in the Incorporated Village of Sea Cliff, and that said notice of hearing was also to be posted in three conspicuous places in the Incorporated Village of Sea Cliff, one of which was to be posted upon the bulletin board in the office of the Village Clerk of the Incorporated Village of Sea Cliff.

Section 3. That the notice of public hearing to be held by the Board of Supervisors or a standing or special committee thereof was thereafter published in the Glen Cove Record-Pilot and in the official newspapers, designated by the Board of Supervisors, on March 29, 1962, and affidavits of such publications are on file with the Clerk of the Board.

Section 4. That pursuant to Resolution No. 49, 1962 of the Board of Supervisors, relating to procedure, Supervisors John J. Burns, Clinton G. Martin and Joseph M. Reilly were designated as a Special Committee of the Board of Supervisors for the purpose of conducting the hearing referred to in sections 2 and 3 hereof. On April 16, 1962, a public hearing was held by the said Special Committee of the Board of Supervisors in the Incorporated Village of Sea Cliff and closed on the same day and no one appeared in opposition to the said petition. The minutes of the said hearing, held on April 16, 1962, are on file with the Clerk of the Board of Supervisors together with the written report of the Special Committee of the Board of Supervisors with regard to the proceedings at the said hearing.

Section 5. From all of the proceedings had herein and the papers on file with the Clerk of this Board, it appears that the 1960-61 budget of the Incorporated Village of Sea Cliff contained a deficit as of May 31, 1961, in the total amount of \$21,300.04, of which amount \$9,572.70 constituted extraordinary snow removal costs subsequently financed in pursuance of Chapter 494 of the Laws of 1961, leaving a balance overexpended against a fund or account in excess of the total amount appropriated or lawfully transferred thereto, of \$11,727.34.

Section 6. That such over-expenditures or obligations incurred against a fund or account in excess of the total amount appropriated was the result of inadvertence, mistake or error in accounting methods or otherwise and was not the result of fraud and no substantial hardship will result therefrom and the aforesaid acts were had and taken in connection with a lawful municipal object or purpose by the appropriate officials of the said Incorporated Village of Sea Cliff.

Section 7. That this Board determines that the acts in sections 5 and 6 of this local law are hereby legalized and validated.

Section 8. That the amount of the over-expenditures or obligations legalized and validated, as provided herein, may be paid from available funds or shall be deemed to be a settled claim within the meaning of paragraph a of subdivision 33 of section 11.00 of the Local Finance Law, which may be financed by the issuance of bonds or capital notes, provided, however, that the maximum maturity of any such bonds shall not exceed three years from the date of issuance of such bonds or from the date of issuance of the earliest bond anticipation note issued in anticipation thereof, whichever date is the earlier, and provided further, however, that the cost shall be charged against the area normally responsible for the payment of the over-expenditures or obligations hereby legalized and validated.

(These provisions enacted by Local Law No. 2, 1962, in effect May 28, 1962.)

#### TITLE 4

### NASSAU COUNTY AMERICAN REVOLUTION BICENTENNIAL ADVISORY COMMISSION

#### **Chapter 1. Expansion of membership: Appointment of a Secretary to the Commission.**

Section 1. Such commission shall have not less than ten nor more than twenty members who shall be appointed by the County Executive subject to confirmation by the Board of Supervisors. One member shall be designated as chairman by the County Executive and the

director of the Nassau County museum shall be an ex officio member of the commission. Within the appropriation therefor, there shall be a secretary to the commission who shall be appointed by the commission. The members of the commission shall serve without compensation, but shall be reimbursed for expenses, actually and necessarily incurred, in the performance of their duties within the appropriation for that purpose. Vacancies on the commission shall be filled for the unexpired term in the same manner as original appointments.  
(Local Law No. 6, 1973, in effect October 1, 1973)

## TITLE 5

### NASSAU COUNTY VETERANS MEMORIAL COLISEUM

#### Chapter 1. **Rules and regulations regarding Nassau County Veterans Memorial Coliseum.**

Section 1. There are hereby established rules and regulations relating to the use of the Nassau County Veterans Memorial Coliseum.

Section 2. Definitions. Unless otherwise expressly stated whenever used in this local law, the following terms shall respectively mean and include each of the meanings as set forth below:

- a. "Director" shall mean the Executive Director of the Nassau County Veterans Memorial Coliseum.
- b. "Coliseum" shall mean the Nassau County Veterans Memorial Coliseum which shall include the entire Coliseum building, together with the surrounding grounds, including, but not limited to, parking fields, roadways, malls and entrances thereto.
- c. "Person" shall mean any individual, firm, partnership, association or corporation.
- d. "County Executive" shall mean the County Executive of Nassau County.
- e. "Coliseum building" shall be limited to its ordinary meaning and shall not include surrounding grounds.

Section 3. Construction. The provisions of this local law shall be construed as follows:

1. Any term in the singular shall include the plural.
2. Any term in the masculine shall include the feminine and the matter.\*
3. When one person engages in conduct which constitutes an offense under the provisions of this local law, another person is liable for such conduct when he solicits, requests, commands, importunes or intentionally aids such person to engage in such conduct.
4. The provisions of this local law shall not apply to any act necessarily performed by any County officer or employee in line of duty or work, or by any person, his agents or employees, in the proper and necessary performance of the terms of any agreement with the county of Nassau.
5. These rules and regulations are intended to supplement all applicable municipal, state and federal laws and ordinances.

\*So in original. (Ed.'s note. Probably should read "neuter".)

Section 4. General regulations.

a. Meetings, exhibits and performances.

The erection of any structure, the staging of any performance, the conducting of any athletic event or the holding of any meeting at the Coliseum shall be done as provided in a duly executed contract or upon such terms and conditions as the director or his designated representative may deem necessary, subject to the approval of the County Executive.

b. Peddling and sales.

No person shall exhibit, sell or offer for sale or hire any object, merchandise or service at the coliseum, without the approval of the County Executive, except as provided in a duly executed contract between such person and the county of or as otherwise authorized by the Director or his (lest representative.

c. Littering.

All litter or garbage shall be placed in the receptacles provided therefor.

d. Property.

No person shall injure, deface, alter, remove or destroy any property or equipment of another person at the coliseum.

e. Advertising and demonstrations.

1. No person shall display any sign, banner or poster which unreasonably obstructs the view of other persons in the coliseum building or interferes with a performance, exhibition, show, game, event or contest therein.
2. No person shall distribute, at the Coliseum, any sign, banner poster, or similar material which is readily capable of obstructing the view of other persons in the Coliseum, building or interfering with the performance, exhibition show, game, event or contest therein.

f. Prohibited conduct.

No person shall, at the coliseum:

1. disobey or disregard the lawful directions of any police officer, coliseum employee, or any lawful sign or posted regulations at the coliseum;
2. throw or attempt to throw any object which injures or is readily capable of causing injury to other persons, animals equipment or property;
3. solicit alms, subscriptions or contributions for any purpose except where such solicitation results from fund raising program authorized by the Board of Supervisors of the county of Nassau;
4. interfere with, encumber or obstruct passage of any entranceway or exit of the coliseum;
5. enter or leave the coliseum except at established entranceways or exits and at established times;



6. gain or attempt to gain admittance to any event at the coliseum without paying the established fee; or
7. bring thermos bottles or other types of scaled containers into the Coliseum, unless authorized by the Director or his designated representative.

g. Firearms, weapons, explosives.

No person shall have in his possession or bring into the Coliseum any firearm, weapon, explosive, fireworks, or properties having such characteristics, except when specifically permitted by law or duly licensed.

h. Alcoholic beverages.

No person shall bring beer, ale, wine or other alcoholic beverages into the Coliseum, unless authorized by the Director or his designated representative.

i. Animals.

No person shall bring any animals into the Coliseum unless authorized by the Director or his designated representative.

j. Trespass.

Any person who remains on the premises of the Coliseum and has no legitimate or lawful reason for remaining and refuses to leave upon the lawful request of a duly authorized representative of the Director or a police officer shall be guilty of trespassing.

k. Fires.

No person shall intentionally or recklessly cause a fire to be started which creates or is readily capable of creating a hazardous condition and serves no legitimate purpose.

## Section 5. Traffic

a. Traffic control.

All persons shall comply with all applicable ordinances, posted regulations and the lawful directions of police officers and Coliseum employees in parking areas.

b. Restrictions on vehicles.

1. Commercial vehicles. Vehicles such as trucks and trailers engaged in the commercial carrying of merchandise are prohibited from entering the coliseum except to make necessary deliveries or pickups.
2. Omnibuses. No person shall drive or operate at the Coliseum any omnibus adapted for more than nine passengers except upon payment of the prescribed entrance fee or when authorized by the Director or his authorized representative.

c. Soliciting passengers.

Except as otherwise provided in this local law, no taxicab driver or other person shall offer his vehicle for hire to any person at the Coliseum.

d. Hitchhiking.

No person shall attempt to solicit a ride from any vehicle at the Coliseum except in case of emergency.

e. Restricted areas.

No person shall operate a vehicle at, within, or upon any area not designated for use by the public.

f. Obstructing traffic.

No person shall cause or permit any obstruction of traffic by a vehicle or otherwise at the Coliseum. No person shall remove or replace a flat tire at the Coliseum unless the vehicle is completely off the roadway so that no part of the vehicle or person is within the path of passing vehicles.

g. Towing.

No person shall cause or permit a vehicle to be towed or pushed by another vehicle at the Coliseum except that in the event of a breakdown, a disabled vehicle may be towed or pushed to the nearest exit.

h. Removal of vehicles.

1. Illegally parked. The Nassau County Police Department and/or Director or his designated representative are hereby authorized to provide for the removal of any vehicle to a garage, automobile pound or other place of safety if such vehicle is parked so as to obstruct traffic and is unattended or is parked and unattended at the Coliseum, except those vehicles parked in areas where parking shall be permitted by order of the County Executive. The owner or other person lawfully entitled to the possession of such vehicle may be charged with the reasonable cost for removal and storage, payable before the vehicle is released. The County shall not be liable for damages which may result from such removal.
2. Vehicles stalled or disabled. Any stalled or disabled vehicle shall not be permitted to remain at the Coliseum for more than a reasonable time after the last performance of any event. If not removed by the owner, such vehicle may be removed by the Coliseum employees or by licensed tow operators authorized by the Director or his designated representative with the approval of the County Executive at the expense of the owner.

Section 6. Enforcement. The Coliseum management or his designated representatives of the Nassau County Police Department shall be authorized to remove from the Coliseum any person who there is reasonable cause to believe has violated any of the provisions of this local law.

Section 7. Penalties. A violation of the provisions of this local law shall be punishable by a fine not exceeding one hundred dollars or imprisonment for a period not exceeding fifteen days for each violation or by both such fine and imprisonment.  
(Local Law No. I, 1978, in effect January 9, 1978.)

## TITLE 6

### CONSUMER AFFAIRS - PERISHABLE FOOD - PRICING

#### Chapter 1. **Expiration date of perishable foods to be displayed.**

Section 1. Legislative purpose. The Board of Supervisors hereby finds and determines that the consumers of Nassau County should be able to ascertain that perishable food products offered for sale or sold in the County are fresh and that such food products will not spoil or suffer loss of either nutritional value or palatability for a reasonable period of time after purchase. Therefore, the Board of Supervisors deems it in the best interests of the consumer public to establish a system of clear and legible dating in order to assure consumers of the freshness of perishable food products sold or offered for sale within the County.

#### Section 2. Definitions.

- a. "Commissioner" means the Commissioner of Consumer Affairs.
- b. "Office" means the Office of Consumer Affairs.
- c. "Person" means an individual, firm, partnership, association or corporation.
- d. "Perishable food products" shall mean those commodities as defined in section three or as otherwise designated by regulations promulgated pursuant to the provisions of this local law.
- e. "Sell" or "offer to sell" shall mean the act of selling, displaying, or offering for sale by a retailer or retail entity to the public for off-premises human consumption.

Section 3. Perishable food products. For the purposes of this local law, the following items shall be deemed perishable food products:

- a. eggs-grade AA, grade A and grade B shell eggs.
- b. all pre-packaged, fully or partially prepared baked goods, which have a moisture content exceeding eighteen percent, with or without additives known as:
  - (1) bread, rolls and buns as defined in title twenty-one, chapter one, part seventeen of the code of federal regulations, except those products traditionally known as "fruitcake";
  - (2) cakes, pastries and cookies, except those that are offered for sale in individual, portion-pack, snack-type packages;

- (3) english muffins, corn muffins, bran muffins and other similar products.
- c. The following pre-packaged dairy and dairy-type products:
  - (1) those products with or without additives or flavoring, known as cheese, as defined in title twenty-one, chapter one, part nineteen of the code of federal regulations, which contain fifty percent or more moisture in the finished product;
  - (2) milk and milk products as defined in title ten, chapter one, part three of the official compilation of codes, rules and regulations of the state of New York;
  - (3) cultured milk, cultured milk products, cultured skim milk and cultured skim milk products with or without fruits, vegetables, meats or cheeses, or other additives;
  - (4) yogurt, made from skim milk or whole milk, with or without fruits, vegetables, meats or other additives;
  - (5) cultured cream, salad cream and non-cultured sour cream, with or without fruits, vegetables, meats or cheese or other additives;
  - (6) cultured half and half, non-cultured sour half and half and non-cultured half and half;
  - (7) dairy dressing and dairy dip;
  - (8) non-dairy coffee creamers which are normally stored at temperatures between thirty-two degrees Fahrenheit and forty degrees Fahrenheit.
- d. All pre-packaged, prepared foods which require refrigeration.
- e. Meat as defined in title one, chapter six, part three hundred one of the official compilation of codes, rules and regulations of the state of New York.
- f. Slaughtered domesticated poultry (chicken, turkey, geese and guineas).

#### Section 4. General dating requirements.

- a. It shall be unlawful to sell or offer for sale any perishable food product unless there is a stamped, printed or otherwise plainly and conspicuously marked a day or date indicating the last day or date of sale with a statement which shall further indicate that it is the last day or date of sale.
- b. It shall be unlawful to sell or offer for sale any perishable food product after the day or date required by subdivision (a) of this section, except that outdated perishable food products may continue to be sold provided they are conspicuously identified as outdated perishable food products and are physically separated from perishable food products whose expiration dates have not expired. The Commissioner may, by regulation, set standards for the form of conspicuous identification required for the sale of outdated perishable food products.

Section 5. Display of required information. The information required by subdivision (a) of section four shall be clearly marked on each and every package or item as follows:

- a. on the top cover or principal panel of the packaging or container, or, on a label affixed thereto, or

b. on the top or principal panel or on a label affixed thereto, a notice shall appear indicating the location on the packaging of the required information.

Section 6. Exemptions. The provisions of this local law shall not apply to:

- a. any product stored in a retail store at or below a temperature of thirty-two degrees Fahrenheit, in accordance with the specifications of the manufacturer or processor;
- b. any sterilized product when hermetically sealed and packaged and is so maintained until the time of sale to the public;
- c. products made from products which are date marked where such secondary products are the result of an additional processing stage;
- d. prepared foods sold or offered for sale exclusively on the premises where manufactured;
- e. poultry and meat particles prepared at any establishment under inspection pursuant to the federal meat inspection act, as amended by the wholesome meat act.

Section 7. Violations.

- a. The Commissioner or his designated representative shall have the power to impose upon any person who shall violate any of the provisions of this local law and/or any regulations duly promulgated with respect thereto a civil penalty of not less than fifty dollars nor more than five hundred dollars for each such violation.
- b. For purposes of this section, each group of identical packaged perishable food products which, on any single day, are in violation of either or both subdivision (a) or (b) in section four, shall constitute a single violation.
- c. Each day a violation is continued shall constitute a separate violation.
- d. No penalty shall be imposed until after a hearing has been held before the Commissioner or his designated representative upon at least five business days' notice to the alleged violator. Such notice shall be served either personally or by certified mail, return receipt requested, to the last known address of the alleged violator, and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations. The alleged violator may be represented by counsel and may produce witnesses in his own behalf.
- e. All monies received by the Office pursuant to the provisions of this local law shall be remitted to the County Treasurer for deposit in the general fund of the County within thirty days after receipt.

Section 8. Powers of the Commissioner.

- a. The Commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and may take appropriate action related thereto including stop-sale and stop-removal orders where necessary and proper, except that stop-sale and stop-removal orders may only be issued in conjunction with the issuance of a notice of violation of either section four or section five hereof.
- b. The Commissioner shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the day or date affixed pursuant to section four and five.
- c. The Commissioner may promulgate regulations designating additional commodities as perishable food products whenever the commissioner shall find that

because of the nature of the commodity or the mode of packaging, information relative to the last selling day or date of the commodity shall be necessary in order to provide adequate information to the consuming public as to the perishable nature of such commodity.

d. The Commissioner may promulgate regulations deleting commodities as perishable food products whenever the Commissioner may find that as a result of new technology or otherwise, it is no longer necessary to require disclosing of the last selling day or date of such commodity.

e. No rule or regulation may be promulgated pursuant to subdivision (c) or (d) herein unless a public hearing is held by the Commissioner. At least seven business days' prior notice of such public hearing shall be published in the official newspapers of the County. A copy of all rules and regulations promulgated and any amendments thereto shall be filed in the office of the clerk of the board of supervisors.

Section 9. Injunctive relief. Upon application of the Commissioner, the County Attorney may commence a civil action in the name of the County to restrain, prevent and enjoin a violation of this local law or any rule or regulation promulgated or any continuance of such violation.

Section 10. Review of administrative determination. The action of the Commissioner in adjudging penalties or making administrative determinations appropriate to his powers and duties may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the Civil Practice Law and Rules of the state of New York.

Section 11. Separability. If any part of, or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances.

Section 12. Superseder. Nothing contained within this local law shall be deemed to conflict with and/or supersede the authority of the Nassau County Department of Health or any state or federal law or regulation with respect to the dating of perishable food products.  
(Local Law No. 7, 1976, in effect November 13, 1976)

## **Chapter 2. Pricing of Consumer Products within Nassau County.\***

\*(Local Law No. 13-1974 in effect January 7, 1975, and terminated on January 7, 1976 in accordance with its terms.)

## **TITLE 7**

## **RACING**

### **Chapter 1. Off-track parimutuel betting within Nassau County.**

Section 1. The County of Nassau pursuant to subdivision five of the section one hundred eighteen of article six of the New York State Off-track Pari-mutuel Betting Law, as renumbered by chapter four hundred twenty-three of the laws of nineteen hundred seventy-one, hereby requests and authorizes the conduct of off-track pari-mutuel betting within the County. The

County Executive is hereby authorized to execute such application and other papers and documents as may be necessary for the approval of the County as a participating municipality.

Section 2. Upon approval of the County as a participating municipality, as aforesaid, the County Executive, subject to approval of the Board of Supervisors, may submit a plan of operation for the conduct of such off-track pari-mutuel betting to be operated by the County as such participating municipality.

(Local Law No. 10, 1971, in effect September 13, 1971)

## **Chapter 2. County of Nassau participation in the management of the Nassau-Suffolk regional off-track betting corporation.\***

\*(Editors note- Chapter 2 has been repealed by the enactment of Chapter 3 of this title.)

## **Chapter 3. Nassau County participation in the Nassau regional off-track betting corporation.\***

Section 1. Local Law number twelve of nineteen hundred seventy-three of the county of Nassau in relation to the Nassau - Suffolk regional off-track betting corporation is hereby repealed.

Section 2. The county of Nassau, pursuant to the "regional off-track betting corporation law," as added by chapter three hundred forty-six of the laws of nineteen hundred seventy-three, and amended by chapter six hundred sixty-four, of the laws of nineteen hundred seventy-four, hereby elects to participate in the Nassau regional off-track betting corporation.

(Local Law No. 10, 1974, in effect August 17, 1974.)

\*(Ed's Note. L. 1973, c. 346 repealed by L.1982, c. 865 § 2. Subject matter is now covered in Article V of the Racing, Pari-mutuel Wagering and Breeding Law as added by L. 1982, C. 865. §1.)

## **TITLE 8**

### **SOCIAL WELFARE**

## **Chapter 1. Issuance of specific parking permits for use of physically handicapped persons.**

Section 1. The board of supervisors finds and determines that it is in the best interests of the residents of the county of Nassau to grant certain parking privileges to physically handicapped persons.

Section 2. The term "physically handicapped person", for the purpose of this local law, shall mean any person who by reason of a defect or infirmity whether congenital or acquired by accident injury or disease, is permanently incapacitated, totally or partially, from walking without the assistance of artificial devices.

Section 3. Any person who is a physically handicapped person, as defined in section two of this local law, may apply to the Coordinator of the handicapped for a special parking permit.

Section 4. Such permit shall authorize the holder thereof to park the motor vehicle for which the permit was issued in those areas under county jurisdiction designated to be available for

such purpose to physically handicapped persons and in areas under city, town or village jurisdiction where the governing body of the municipality has designated such areas and authorized the use of permits issued by the Coordinator pursuant to the provisions of this local law.

Section 5. The application for a special parking permit by a physically handicapped person shall be made on forms furnished by the coordinator of the handicapped which shall contain, but not be limited to, the following information:

- a. name and address of applicant;
- b. age, date of birth, sex, height, weight, color of hair and color eyes of applicant and whether married or single;
- c. the type of driver's license held by the applicant and the license or identification number thereof and the date of issuance and expiration date thereof;
- d. all the restrictions listed on said driver's license;
- e. occupation and social security number of applicant;
- f. name and address of applicant's employer and business phone;
- g. if applicant is a student, name and address of school, course of study and hours of attendance;
- h. name and address of owner of vehicle to be used;
- i. year, make, type, identification or serial number and color of said vehicle, the license plate number, and tab number, if any, and the year for which issued and state which issued same;
- j. whether a physically disabled drivers parking permit was ever issued to the applicant and, if so whether it was ever revoked, and requesting details of any revocation.

Section 6. Upon receipt of an application for a special parking permit the Coordinator may arrange for a medical examination of the applicant at the Nassau County Medical Center. Upon completion of a physical examination the Nassau County Medical Center, if it determines that the applicant qualifies as a physically handicapped person within the meaning of this local law, may certify such determination to the coordinator. The following findings may be included in the certification by the Nassau County Medical Center:

- a. nature and duration of disability;
- b. cause of disability;
- c. date of last examination;
- d. whether the disability is progressive.

In the event the Medical Center is unable for any reason to conduct the required examination, the Coordinator may accept the certification of a private physician concerning the disability.

Section 7. Upon approval of the application for a special parking permit by a physically handicapped person, the Coordinator may issue a special parking permit to the applicant which shall be in such form as may be prescribed by the Coordinator and shall expire in the following year on the date of the original issuance of the permit and renewed in each succeeding year. The Coordinator may also issue to the applicant an identification card bearing the same number as that on the permit to be affixed to the automobile.



Section 8. Any permit issued pursuant to this local law, to be effective, shall be conspicuously displayed against or near the inside lower right front window of the motor vehicle in which the physically handicapped person in whose name the permit is issued shall be transported at the time. Such permits shall not be transferable and shall be subject to such conditions, rules and regulations as the Board of Supervisors of the county of Nassau may establish and the acceptance of a permit shall constitute an agreement to comply with such conditions, rules and regulations. When the vehicle is parked, stopped or left standing in a parking space designated as reserved parking for physically handicapped persons the permit shall be placed within the motor vehicle in such manner as to be visible and legible from the outside of the vehicle.

Section 9. The permit issued may bear a code which shall indicate the town, city, or incorporated village in which the driver of the vehicle resides.

Section 10. In the event a person, other than the person to whom the permit is issued, utilizes the permit claiming the privileges granted under this local law to the physically handicapped person, the permit issued to the physically handicapped person shall be subject to suspension for six months for the first offense if the Coordinator determines that such use was with the consent, expressed or implied, of the permittee. After a second offense, as determined by the Coordinator, the permit may be revoked. Prior to suspension or revocation as herein provided, a hearing shall be held by the Coordinator. Notice of any hearing to be held by the Coordinator for revocation or suspension of any license or permit shall be mailed, by ordinary mail, to the holder of the permit directed to the address of such holder as set forth in the application. Such notice shall be mailed not less than five days prior to the hearing date and shall advise said holder of the permit of the time and place of the hearing and shall contain a concise statement of the reason or reasons for holding the hearing. The Coordinator shall make findings based upon the evidence presented at such hearing, which shall be conclusive as to all matters of fact.

Section 11. The Coordinator may process applications and issue permits effective in any city, town or village within the county of Nassau upon the adoption of an appropriate local law, ordinance or resolution by the governing body of such municipality designating parking areas for use by physically handicapped persons and authorizing the use of permits issued pursuant to this local law.

(Local Law No. 4, 1973, in effect March 26, 1973.)

## TITLE 9

### TAXATION

#### **Chapter 1. Imposition of a four percent sales and compensating use tax, 1976-77.**

Section 1. Notwithstanding the provisions of any ordinance to the contrary, for the period beginning September first, nineteen hundred seventy-six and ending August thirty-first, nineteen hundred seventy-seven, there is hereby imposed and there shall be paid a four percent sales and compensating use tax, which shall be one percent additional to the three percent rate presently imposed, on the items and services enumerated in ordinance numbered four hundred four-C of nineteen hundred sixty-eight, as amended.

Section 2. The tax imposed herein shall be administered and collected as provided by Nassau County Board of Supervisors ordinance numbered four hundred four-C of nineteen hundred sixty-eight, as amended.

(Local Law No. 6, 1976, in effect July 16, 1976.)

## **Chapter 2. Imposition of a four percent sales and compensating tax, 1983-84.**

Section 1. Notwithstanding the provisions of any ordinance to the contrary, for the period beginning June first, nineteen hundred eighty-three and ending December thirty-first, nineteen hundred eighty-four, there is hereby imposed and there shall be paid a one percent sales and compensating use tax which shall be in addition to the three percent rate presently imposed on the items and services enumerated in Nassau County Board of Supervisors ordinance numbered four hundred four-C of nineteen hundred sixty-eight, as amended.

(Local Law No. 2-1983, in effect June 1, 1983.)

## **Chapter 3. Imposition and collection of a privilege tax on coin operated amusement devices\***

(Local Law No. 7-1977 in effect October 17, 1977; repealed by Local Law No. 1-1979.)

(Editor's Note: For current privilege Tax on Coin Operated Amusement Devices see § 21-12.0 et. seq. of Nassau County Administrative Code.)

## **Chapter 4. Imposition of a sales and use tax 1991-2007; Establishment of Local Government Assistance Program.**

Section 1. Notwithstanding the provisions of any local law or ordinance to the contrary, for the period beginning September first, nineteen hundred ninety-one and ending November thirtieth, two thousand seven, there is hereby imposed and there shall be paid a four and one-quarter percent sales and use tax, with respect to the items and services enumerated in ordinance numbered four hundred four-c of nineteen hundred sixty-eight, as amended, subject to the exemptions, exclusions and other provisions applicable to such taxes set forth in such ordinance.

Section 2.a Towns and cities. For the calendar year beginning on January first, nineteen hundred ninety-eight and continuing through the calendar year beginning on January first, two thousand seven, a local government assistance program is hereby established pursuant to section twelve hundred sixty-two-e of the New York Tax Law for the towns and cities within the County to assist such towns and cities to minimize real property taxes; defray the cost and expense of the treatment, collection, management, disposal and transportation of municipal solid waste, and to comply with the provisions of chapter two hundred ninety-nine of the laws of nineteen hundred eighty-three; and defray the cost of maintaining conservation and environmental control programs. The funding for such programs shall equal one-third of the revenues received by the County from the imposition of the three-quarters percent sales and use tax during calendar years two thousand one, two thousand two, two thousand three, two thousand four, two thousand five, two thousand six, and two thousand seven, additional to the regular three percent rate authorized for the county by section twelve hundred ten of the New York Tax law. Such one-third of such revenues shall be paid and distributed to the towns and cities on a per capita basis using the population figures in the latest decennial federal census. The establishment of this local government assistance program shall preclude any city or town in the county from preempting or claiming under any other section of the New York Tax Law the revenues derived from the county's additional rate of sales and compensating use taxes imposed pursuant to the authority of section twelve hundred ten of the New York Tax Law. Any town or towns may, by resolution of the town board, apportion all or a part of the monies received in this special assistance program to

n improvement district or special district account with such town or towns in order to accomplish the purposes of this special assistance program.

Section 2.b The local government assistance program hereby created shall be funded in an amount not to exceed one quarter of the revenues received from the imposition of the one percent sales and use tax during the calendar year nineteen hundred eighty-five, and not to exceed one third of the revenues received by the County from the imposition of the three quarter percent sales and use tax during the calendar years nineteen hundred eighty-six, nineteen hundred eighty-seven, nineteen hundred eighty-eight, nineteen hundred eighty-nine, nineteen hundred ninety, nineteen hundred ninety-one, nineteen hundred ninety-two, nineteen hundred ninety-three, nineteen hundred ninety-four, nineteen hundred ninety-five, nineteen hundred ninety-six and nineteen hundred ninety-seven, additional to the regular three percent rate authorized for the County in section twelve hundred ten of the tax law and ordinance four hundred four-C of nineteen hundred sixty-eight, as amended through August 31, 1991 and additional to the three and one half percent rate authorized for the County in section twelve hundred ten of the tax law and ordinance four hundred-C of nineteen hundred sixty eight, as amended for the period September 1, 1991 through December 31, 1997.

Section 2.c The Nassau County Legislature shall by ordinance implement the local government assistance program as created by this local law. Such ordinance shall provide for the amounts and methods of payment to the towns and cities authorized by this local law and section twelve hundred sixty-two-e of the Tax Law.

Section 2.d. Aid to villages in Nassau County.

For the calendar years beginning January first, two thousand one and continuing through the calendar year beginning on January first, two thousand seven, the county hereby establishes a local government assistance program for the villages within the county pursuant to section twelve hundred sixty two-e of the New York Tax Law to assist such villages to minimize real property taxes; defray the cost and expense of the treatment, collection, management, disposal, and transportation of municipal solid waste, and defray the cost of maintaining conservation and environmental control programs. Such program shall be funded in the amount of one million dollars in the calendar year beginning on January first, two thousand six and one million two hundred fifty thousand dollars in the calendar year beginning on January first, two thousand seven from the collections from the county's additional three-quarter percent rate of sales and compensating use taxes during that calendar year, which amount shall be paid and distributed to such villages on a per capita basis using the population figures in the latest decennial federal census. The establishment of this village local government assistance program shall preclude any village in the county from preempting or claiming under any other section of the New York tax Law any revenues derived from the county's additional rates of sales and compensating use taxes imposed pursuant to the authority of section 1210 of the New York Tax Law.

(Local Law No. 18-1984 as amended by Local Law No. 21, 1984, in effect January 1, 1985, § 1 and § 2(b) amended by Local Law No. 4, 1988, in effect November 14, 1988; Local Law No. 6, 1989, in effect September 11, 1989; Local Law 13-1990, in effect January 1, 1991; Local Law No. 7-1991, in effect September 1, 1991; Local Law 4-1993, in effect January 1, 1994; Local Law No. 8-1995, in effect January 1, 1996; Local Law No. 3-1997, in effect, January 1, 1998; Local Law No. 2-2001; Local Law 16-2003, in effect December 1, 2003; Local Law No 11-2005, in effect December 1, 2005.)

## TITLE 10

### TRANSPORTATION

#### Chapter 1. **Mass Transportation Services.**

Section 1. It is hereby declared to be the policy of the County of Nassau that adequate, safe and efficient transportation facilities and services at reasonable cost to the residents of the County are essential to the growth of the County and the well-being of the residents.

Section 2. In order to assure the provision of Mass Transportation Services within the County of Nassau, the County Executive is authorized, with the approval of the Board of Supervisors, to enter into a contract or contracts for a fair and reasonable consideration for Mass Transportation Services to be rendered to the public by a privately owned or operated Mass Transportation facility or facilities.

Section 3. The Board of Supervisors of the County of Nassau may appropriate such sums of money as it may deem proper for the operation of the Mass Transportation System or any part thereof, in the County of Nassau for the purpose of maintaining transportation services at levels of performance determined by such Board.  
(Local Law No. 2, 1972, in effect February 2, 1972.)

## TITLE 11

### ELECTED OFFICIALS

#### Chapter 1. **Compensation of the District Attorney and the County Comptroller of Nassau County.**

Section 1. The annual salary of the following Nassau County elected officials shall be increased, by ordinance, over the salary paid at the start of the respective terms of such elected officials in accordance with the schedule hereafter set forth:

County Official	Start of Term 1982 Salary	Proposed 1984 Salary
District Attorney	\$64,163	\$77,041
County Comptroller	\$58,000	\$70,000

(Local Law No. 6-1984, in effect May 24, 1984.)

## TITLE 12

### EARLY RETIREMENT INCENTIVE PROGRAM

Section 1. The County of Nassau hereby elects to provide all its eligible employees with a

retirement incentive program as authorized by Chapter 47, Laws of 1998.

Section 2. The commencement date of the retirement incentive program shall be September 1, 1998.

Section 3. The open period during which eligible employees may retire and receive the additional retirement benefits, shall be thirty one (31) days in length up to and including October 1, 1998.

Section 4. Eligible employees who elect to retire and receive the additional retirement benefits shall receive their requisite cash payments for accumulated vacation and sick leave, as provided below either under the CSEA Collective Bargaining Agreement or under Ordinance 543-1995, as amended, with such payments to be made in three equal annual installments, the first payable on or before January 31, 1999, the second payable on or before January 31, 2000 and the final payable on or before January 31, 2001:

- a) Eligible employees under the CSEA Collective Bargaining Agreement shall have sick leave accumulations calculated in accordance with Section 42-10.1 (c) (2) of the July 27, 1998 Memorandum of Agreement; and
- b) Eligible non-contract employees shall have sick leave accumulations calculated in accordance with Section 3.6 of Ordinance 543-1995, as amended.

Section 5. The actuarial present value of the additional retirement benefits payable pursuant to the provisions of this local law shall be funded over a five year period. The amount of the annual payment in each of the five years shall be determined by the Actuary of the New York State and Local Employees' Retirement System, and it shall be paid by the County of Nassau for each employee who receives the retirement benefits payable under this local law.

(Local Law No. 16-1984, in effect August 27, 1984; amended by Local Law No. 17-1984, in effect September 10, 1984; Local Law No. 6-1991, in effect August 1, 1991; Local Law No. 14-1992, in effect September 1, 1992; Local Law No. 7-1995, in effect August 21, 1995; Local Law No. 6-1996, in effect August 23, 1996; Local Law No. 2-1997, in effect July 8, 1997; Local Law No. 6-1998, in effect August 31, 1998.)

## TITLE 13

### NASSAU COMMUNITY COLLEGE

#### Chapter 1. **Establishment of liability and casualty reserve fund.**

Section 1. Definitions. "Judgments", "actions" and "claims", as used in this Chapter, shall mean those judgments, actions and claims against Nassau Community College and/or the Dormitory Authority of the State of New York that are founded upon tort or that arise out of any acts or omissions of their respective officers, employees, agents or other representatives that result in personal injuries or property damage, if such officers, employees, agents or other representatives, at the time the damages were sustained, were acting within the scope of their powers and duties.

Section 2. Establishment of liability and casualty reserve fund. There is hereby established a reserve fund to be known as the liability and casualty reserve fund.

Section 3. There may be paid into such fund:

- a. Such amounts as may be provided by budgetary appropriations;
- b. Amounts from any other fund authorized by the General Municipal Law by resolution subject to permissive referendum; and
- c. Such other funds as may be legally appropriated.

Section 4. For the fiscal year commencing June 30, 1986, the sum of one hundred thousand (\$100,000) dollars shall be deposited in the fund by Nassau County from monies appropriated by Nassau Community College for such purpose. Thereafter, and for each fiscal period commencing June 30, the amount to be deposited in the fund shall be determined by an actuarial study within the constraints set forth in Section 5 below.

Section 5. The cash balance of such fund at the end of any fiscal year shall not exceed the greater of one hundred thousand (\$100,000) dollars or five (5%) per centum of the total budget for such fiscal year. The amount paid into such fund during any fiscal year shall not exceed the greater of thirty-three thousand (\$33,000) dollars or one and two-thirds (1 2/3%) per centum of the total budget for such fiscal year.

Section 6. The monies in such fund shall be deposited in one or more banks or trust companies designated in the manner provided by law as depositories of the funds of the County of Nassau. The County Treasurer may invest the monies in such fund in obligations specified by the General Municipal Law. Any interest earned or capital gain realized on the monies so deposited or invested shall accrue to and become part of such fund.

Section 7. The County Treasurer shall account for this fund separate and apart from all other funds of the County of Nassau. Such accounting shall show: the source, date and amount of each sum paid into the fund; the interest earned by such fund; capital gains or losses resulting from the sale of investments of this fund; the order, source thereof, date and amount of each payment from this fund; the assets of the fund, indicating cash balance and schedule of investments. The County Treasurer, within sixty days of the end of each fiscal year, shall furnish a detailed report of the operation and condition of this fund to the Board of Supervisors.

Section 8. An expenditure may be made from this fund for the payment of all or part of the cost, including interest of:

- a. Judgments;
- b. Actions that have been compromised or settled and that have been approved by the Court in which the action or proceeding is pending;
- c. Claims that have been approved by a Justice of the Supreme Court of the Tenth Judicial District;
- d. Claims, demands or actions that have been compromised, settled, or adjusted by the County Attorney.
- e. Expert or professional services rendered in connection with the investigation, adjustment, resolution or settlement of claims, actions or judgments.

Section 9. The order of the court or the justice approving such settlement or compromise may be granted upon motion of the County Attorney or his designee supported by an affidavit setting forth the cause of action or claim against Nassau Community College and/or the Dormitory Authority of the State of New York, and also such other information which, in the

opinion of the County Attorney or his designee, will enable the court or justice to arrive at a determination that such compromise or settlement is just, reasonable and to the interest of Nassau Community College and/or the Dormitory Authority of the State of New York. The County Attorney or his designee may also present the affidavits of other persons in support of such motion. The court or the justice, in order to arrive at such a determination, may require the County Attorney or his designee to present additional information by a supplementary affidavit or affidavits or may require other persons to present additional information by their affidavits.

Section 10. Notwithstanding section seven of this Chapter, the Board of Supervisors may make an expenditure from this fund, without judicial approval, for the compromise or settlement of any action or claim where the amount of such settlement or compromise does not exceed ten thousand (\$10,000) dollars.

Section 11. If, after the establishment of such fund, the Board of Supervisors of the County of Nassau determines that such fund is no longer needed, the monies remaining in such fund may be transferred to any other reserve fund of the County of Nassau authorized by the General Municipal Law that is comprised of monies which were raised on the same tax base as the monies in the reserve fund established under this Chapter, only to the extent that the monies in this fund shall exceed the sum sufficient to pay all liabilities incurred or accrued against it. Prior to the discontinuance of such fund, the County Treasurer and the County Attorney shall certify to the Board of Supervisors the amount that may be necessary to retain in such fund to satisfy all liabilities incurred or accrued against it and such sum shall be retained in the fund for payment of such amounts or until later certified that such funds are no longer needed.  
(Title 13 added by Local Law No. 9-1986, in effect June 16, 1986.)

## TITLE 14

### DEFACING PROPERTY/AEROSOL PAINT CAN AND BROAD TIPPED MARKERS

Section 1. **Legislative intent.** It is the intention of the Board of Supervisors of the County of Nassau to promote the health, safety and welfare of the residents of the County by strengthening the laws designed to deter the defacing of public and private property with aerosol spray paint cans and broad tipped markers.

#### Section 2. **Definitions.**

- a. The term "deface" shall mean to mar the face or surface of, disfigure, injure or spoil the appearance of.
- b. The term "broad tipped marker" shall mean any felt tip marker or similar implement containing a fluid or coloring matter, and which has a flat or angled writing surface of one-quarter square inch.

**Section 3. Defacement of property, possession and sale of aerosol spray paint cans and broad tipped markers prohibited in certain instances.**

- a. No person shall write, paint or draw any word inscription, design, figure or mark of any type on any public or private building or other structure or any other real or personal property owned, operated or maintained by the County of Nassau or any agency or instrumentality thereof or by any person, firm or corporation unless the express permission of the owner or operator of the property has been obtained.
- b. No person shall carry an aerosol spray paint can or broad tipped marker into any public and/or private building or other public and/or private facility with the intent to violate the provisions of subdivision a. of this section.
- c. No person shall knowingly or having reason to know that the purchaser of an aerosol spray paint can and/or broad tipped marker is under eighteen years of age and/or who intends to use said paint and markers for an illegal purpose sell or offer to sell such product or products to any such purchaser.
- d. Any person selling or offering for sale aerosol spray paint cans or broad tipped markers shall post in a conspicuous place a sign which clearly states:  
"It is unlawful to sell aerosol spray paint cans or broad tipped markers to any person under the age of eighteen years."
- e. Any person selling or offering for sale aerosol paint cans shall only display and/or offer for sale aerosol paint cans in a secure enclosed display or behind a sales counter which is not accessible to the public.

**Section 4. Penalty for violation.** Any person who violates the provisions of subdivisions a, b or c of section three of this title shall be guilty of a class A misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year, or both. The Court may consider a conditional discharge upon the condition that, with the consent of the owner, the defendant restore the property so defaced to its original condition by means of the defendant's own labor or on the condition of monetary restitution in an amount not to exceed the cost of said restoration. Any person who violates the provisions of subdivision d and c of section three of this title for a first offense shall be guilty of a violation punishable by a fine of not more than two hundred fifty dollars, and for a second or subsequent offense shall be guilty of a Class B misdemeanor punishable by a fine of not more than five hundred dollars or three months imprisonment or both.

**Section 5. Civil liability.**

- a. The parent or legal guardian, other than the state or local social services department or foster parent of any minor over the age of ten and under eighteen that violates any provision of this law shall be held liable for any damages and/or clean-up costs that result from a violation of subdivisions a, b or c of section three of this title.
- b. If anyone sells a broad tipped marker and/or aerosol spray paint can to a minor or anyone he knew or should have known would use it for an illegal purpose shall be held liable for any damages and/or clean-up costs that result from the violation.

**§ 6. Separability.** If any clause, sentence, paragraph, section or part of any section shall be adjudged by any court of competent jurisdiction to be invalid; such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause,



sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

(Title 14 added by Local Law No. 14-1986, sections 1 and 2 and subdivisions a and b of section 3, in effect November 17, 1986, subdivisions c and d of section 3, in effect January 17, 1987; amended by Local Law No. 3-1993, in effect June 8, 1993.)

## TITLE 15

### LAND PRESERVATION

#### **Chapter 1. Perpetual preservation of County-owned natural, environmental, recreational, historical and scenic resources.**

Section 1. **Legislative intent.** It is the intention of this legislation, which is to become a new Title 15 in the Miscellaneous Laws of Nassau County, to protect and preserve in perpetuity the natural, environmental, historical and scenic resources of the County of Nassau. While other statutory authority exists to allow the County to purchase and maintain land in a natural and open state, there is no existing statutory authority to protect County owned recreational, historical, natural preserves or environmental areas, either currently owned or hereafter acquired from encroachment from development inconsistent with the intent of this statute. This legislation seeks to strike a balance between controlled growth and environmental and parkland preservation for both this and future generations of Nassau County residents. This legislation shall ensure that no improvement, alteration or modification of the County's 5600 acres of park and natural resources land, any other County land now owned and hereafter designated as such, or any land hereafter acquired by the County for natural, environmental, historical or other purposes, would be undertaken by the County or any other person, firm, municipality, corporation or any other successor in interest if such improvements were not consistent with the recreational, historical and environmental purposes of the land. By implementing this protective legislation, the County of Nassau can insure that the valuable acres of Nassau County land, either currently owned or hereafter acquired will be protected and preserved forever.

Section 2. **Perpetual preservation of designated county land.** Consistent with the Program of Open Space Preservation within Nassau County, there shall be a designation of certain County owned real property as "Perpetual Preservation Land". Those lands of the County now owned, or hereafter acquired, because of their natural beauty, wilderness character, historical significance, geological significance, or ecological and environmental significance may be so designated as hereinafter provided.

The dedication or acquisition of such "Perpetual Preservation Land" shall be preserved and administered for the use and enjoyment of the people, and the management and use of such real property shall be for the sole purpose of preserving and maintaining the natural beauty, wilderness character, historical, geological or ecological and environmental significance, or other natural physical condition of the aforesaid land.

#### Section 3.

a. Hereafter and from time to time the County Executive after study and report shall recommend parcels of County land now or hereafter acquired for designation as "Perpetual Preservation Land".

b. Upon such recommendation by the County Executive and after a public hearing, the Board of Supervisors may designate such County land as "Perpetual Preservation Land" to be held as such in perpetuity.

A designation of "Perpetual Preservation Land" shall be by ordinance, which shall be forthwith duly recorded in the office of the Clerk of the County of Nassau.

Section 4. A designation of County land as "Perpetual Preservation Land" shall be extinguished only by an exercise of the power of eminent domain or an enactment of a general law adopted at two separate sessions of the State Legislature.

Section 5. Nothing herein shall prevent the County from regulation of public access or public use of designated land.

(Local Law No. 5-1988, in effect November 28, 1988.)

## TITLE 16

### NASSAU COUNTY BOARD OF PAROLE

#### Section 1. **Definitions.**

As used in this title, the following terms shall have the following meanings:

- A. "Correctional Center" shall mean the Nassau County Correctional Center.
- B. "County" shall mean the County of Nassau.
- C. "Division" shall mean the Division of Probation and Correctional Alternatives.
- D. "Parole Board" shall mean the Nassau County Board of Parole (Conditional Release Commission) as mandated by Chapter 79 of the Laws of 1989.
- E. "Probation Department" shall mean the Nassau County Probation Department.

#### Section 2. **Organization.**

A. There shall be a Parole Board consisting of three members who shall be appointed by the County Executive with the advice and consent of the Nassau County Board of Supervisors. Compensation for members, if any, may be fixed by ordinance. Each member of the Parole Board shall have graduated from an accredited four-year college or university and shall have had at least five years of experience in the field of criminology, administration of criminal justice, law enforcement, probation parole, law, social work, social science, psychology, psychiatry or corrections.

B. The term of office of each member of the Parole Board shall be for four years, provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom the person is to succeed. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

C. No member of the Parole Board shall serve as a representative of any political party, on an executive committee or other governing body thereof, as an executive officer or employee of any political committee, organization or association, nor be a judge or justice, a sheriff or district attorney.

D. Any member may be removed by the County Executive for cause, after notice and an opportunity to be heard.

**Section 3. Function, Powers and Duties.** The Parole Board shall:

A. have the power and duty of determining which persons sentenced within the County and serving a definite sentence of imprisonment and eligible for conditional release pursuant to subdivision two of section 70.40 of the Penal Law may be released on conditional release and when and under what conditions in accordance with Section 4 of this title;

B. determine, as each inmate applies for conditional release, the need for supplemental investigation of the background of such inmate and cause such investigation as may be necessary to be made as soon as practicable. The Parole Board may require that the Probation Department conduct such supplemental investigation. The results of such investigation together with all other information compiled by the Correctional Center and the complete criminal record and family court record of such inmate shall be readily available when the conditional release of such inmate is being considered. Such information shall include a complete statement of the crime for which the inmate has been sentenced, the circumstances of such crime, all presentence memoranda, the nature of the sentence, the court in which such inmate was sentenced, the name of the judge and district attorney and copies of such probation reports as may have been made as well as reports as to the inmate's social, physical, mental and psychiatric condition and history;

C. have the legal custody of persons conditionally released and placed under the supervision of the Probation Department until the expiration of the maximum term or period of sentence or return to the custody of the Correctional Center, as the case may be;

D. have the power to revoke the conditional release of any person in the legal custody of the Parole Board and to issue declarations of delinquency and authorize the issuance of a warrant for the retaking of such person, as provided for in Section 5 of this title;

E. for the purpose of any investigation necessary in the performance of its duties, have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of its inquiry;

F. have the power to authorize any members thereof to administer oaths and take the testimony of persons under oath;

G. notify in writing the Probation Department prior to release of a conditionally released person of such department's responsibilities to supervise such person;

Such notice shall include the name and residence of the person, the date of release, the conditions of release, and all necessary records maintained on such persons to aid the Probation Department in the performance of its responsibilities pursuant to subdivision 6 of section two hundred fifty-six of the executive law; and

H. have the power to transfer the legal custody of persons conditionally released in accordance with the provisions of Section 6 of this title.

**Section 4. Conditional release; procedures for application and determinations.**

A. Any inmate who is eligible for conditional release by the Parole Board pursuant to subdivision two of section 70.40 of the penal law and who has served a minimum period of thirty days in the Correctional Center may apply for conditional release. Application shall be made in writing, on forms prescribed by the Division, to the Parole Board.

B. The Parole Board shall review and make a determination on each application within thirty days of receipt of such application. No determination granting or denying such application shall be valid unless made by a majority vote of the members.

C. If conditional release is granted, the Parole Board shall set the conditions for release of the person in accordance with rules and regulations promulgated by the Division. Such person shall be given a copy of the conditions of release. Such conditions shall, where appropriate, include a requirement that the person comply with any restitution order previously imposed by a court of competent jurisdiction that applies to the person.

D. No person who has been granted conditional release shall be released until such person has served a minimum period of incarceration of sixty days, in accordance with subdivision two of Section 70.40 of the penal law, and unless such person has agreed in writing to the conditions set by the Parole Board. Such agreement shall state in plain, easily understandable language the consequences of a violation of one or more of the conditions of release.

E. Persons who have been granted conditional release shall, while on conditional release, be in the legal custody of the Parole Board until the expiration of the maximum term or period of sentence, or return to the custody of the Correctional Center, as the case may be. The Probation Department shall have the duty of supervising the person during the period of such conditional release.

F. If conditional release is not granted, the Parole Board shall inform the person in writing of the factors and reasons for such denial of conditional release within fifteen days of the decision. Such reasons shall be given in detail and not in conclusory terms. Inmates denied conditional release are eligible to reapply sixty days after the date of submission of the denied application.

#### **Section 5. Conditional releases; procedures for violation, delinquency, warrants and revocation.**

A. If at any time during the period of conditional release, the Parole Board, or any member thereof, has reasonable cause to believe that a person who has been conditionally released has lapsed into criminal ways or company, or has violated one or more conditions of conditional release, the Parole Board or such member may declare such person delinquent and issue a written declaration of delinquency. Upon such declaration, such Parole Board or such member may issue a warrant for the retaking and temporary detention of such person.

B. A warrant issued pursuant to this section shall constitute sufficient authority to the chief administrative officer of any local correctional facility to whom it is delivered to hold in temporary detention of such person.

C. A warrant issued pursuant to this section may be executed by any probation officer or any officer authorized to serve criminal process or any peace officer, who is acting pursuant to his or her special duties, or any police officer. Any such officer to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such person and having him or her detained as provided for in this section.

D. The alleged violator shall, within three days of the execution of the warrant, be given written notice of the time, place and purpose of the hearing. The notice shall state what conditions of conditional release are alleged to have been violated and in what manner and shall inform the alleged violator of his or her right to counsel as provided for in subdivision G of this section.

E. The alleged conditional release violator shall appear before the Parole Board, or any member thereof, within fifteen days of the execution of the warrant. At the time of such appearance the Parole Board or such member shall ask the alleged violator whether he or she wishes to make any statement with respect to the violation. If the alleged violator makes a statement, the Parole Board or such member may accept it and base a decision thereon. If the Parole Board or such member does not accept it, or if the alleged violator does not make a statement, the Parole Board or such member shall proceed with the hearing.

F. The Parole Board, or any member thereof, may receive any relevant evidence. The alleged violator may cross examine witnesses and may present evidence on his or her own behalf.

G. The alleged violator is entitled to counsel at all stages of any proceeding under this section and the Parole Board, or any member thereof, shall advise him or her of such right upon delivering to the alleged violator written notice required pursuant to subdivision D of this section.

H. At the conclusion of the hearing, the Parole Board, or any member thereof, shall issue a finding. If the Parole Board or such member is not satisfied that there is a preponderance of evidence in support of the violation, the Parole Board or such member shall dismiss the violation, cancel delinquency and restore the person to supervision. If the Parole Board or such member is satisfied that there is a preponderance of evidence that the alleged violator violated one or more conditions of conditional release in an important respect, the Parole Board or such member shall so find.

I. Upon a finding in support of the violation, the Parole Board, or any member thereof, may revoke the conditional release, or continue or modify the conditions of such conditional release. Where the Parole Board or such member revokes a person's conditional release, such person shall be committed to the custody of the Warden of the Correctional Center to serve the time remaining on his or her sentence, in accordance with subdivision three of section 70.40 of the penal law. Where the Parole Board or such member modifies the conditions of the conditional release, the Parole Board or such member shall inform the person in writing of such modified conditions.

#### **Section 6. Transfer of custody and supervision of conditional release.**

A. If a person who has been granted conditional release pursuant to this title resides or desires to reside in a place other than the one located within the jurisdiction of the Parole Board, the Parole Board or any member thereof, may designate any other Parole Board to assume local custody of such person and may so transfer custody.

B. Where custody of a person who has been granted conditional release pursuant to this title is transferred pursuant to subdivision A of this section, upon designation and prior to transfer, the Parole Board making the designation shall notify the Parole Board which has been designated to receive custody of such transfer. The Parole Board making the designation shall immediately forward its entire case record regarding such person to the receiving Parole Board. The Parole Board to which legal custody has been transferred shall assume the same powers and duties exercised by the designating Parole Board and shall have the sole custody of such person.

C. The Parole Board making the designation shall, upon designation and prior to transfer, notify the Probation Department located in the jurisdiction of the receiving Parole Board of the duties of supervision and conditions of release of such person. Upon such notification, such Probation Department shall assume responsibilities of supervision.

The Parole Board making the designation shall immediately forward its entire case record regarding such person to such Probation Department.  
(Local Law No. 3-1989, in effect June 19, 1989.)

## TITLE 17

### PURCHASE FROZEN DESSERTS FROM VENDOR IN MOTOR VEHICLE

#### Section 1. **Definitions.**

- a.) "Frozen desserts" shall mean ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice cream, ice milk, artificially sweetened ice milk, fruit sherbert, non-fruit sherbert, water ices, non-fruit water ices, quiescently frozen confection, quiescently frozen dairy confection, manufactured desserts mix, frozen confection, mellorine frozen dessert, parevine, frozen yogurt, freezer made shakes, freezer made milk shakes, lo-mel, and dietary frozen dessert as all such products are commonly known, together with any mix used in such frozen desserts and any products which are similar in appearance, color or taste to such products or are prepared or frozen as frozen desserts are customarily prepared or frozen, whether made with dairy products or non-dairy products.
- b.) "Other treats" shall include, but is not limited to, candy, chips, soft drinks, juice, and other similar edible items.
- c.) "Person" shall mean any individual, corporation, partnership, association or any other form of business entity engaged in the retail sale of frozen desserts directly to pedestrians from a street vending vehicle.
- d.) "Street vending vehicle" shall mean any vehicle that is used to sell frozen desserts and other treats, and which travels the various roadways within the county making frequent, intermittent stops on the roadways or shoulders of the roadways, in order to sell frozen desserts and other treats.
- e.) "Road" shall mean any roadway located within Nassau County.

#### Section 2. **Restrictions.**

- a.) A person shall vend only when the street vending vehicle is lawfully parked or stopped on road located within Nassau County.
- b.) A person shall vend only from the side of the street vending vehicle away from moving traffic and as near as possible to the curb, edge, or sidewalk of the road.
- c.) A person shall not vend to a pedestrian standing in the roadway of a road located within the county.
- d.) The driver of a street vending vehicle shall not reverse his/her vehicle to make or attempt to make a sale.
- e.) The driver of a street vending vehicle shall not permit any person, other than one presently, directly and legally aiding the driver in the sale of his/her product, to ride on or in the vehicle.
- f.) The driver of a street vending vehicle that stops on a road located within Nassau County for the purpose of selling or offering for sale his or her goods shall fully extend the swing arm with its flashing signal lamps operational, and shall maintain the extended

swing arm until the sale is complete. The swing arm shall be fully retracted and its flashing signal lamps turned off whenever the street vending vehicle is in motion or is not being used to vend frozen desserts or other treats.

g.) In addition to the other equipment required by law, every street vending vehicle operating in Nassau County shall be equipped with a swing arm that can be extended horizontally from the left side of the vehicle. The swing arm shall be made of a material approved by the Commissioner of the Nassau County Department of Public Works. That part of the swing arm that is attached to the vehicle itself shall be seven and three-sixteenths ( $7 \frac{3}{16}$ ) inches in height and, when extended outward and to the side of the vehicle, shall extend to a length of eighteen (18) inches and flared to a height of eighteen (18) inches. Located at the upper and lower corners of the eighteen-inch side will be flashing yellow lights visible from the front and red lights visible from the rear. These lights shall be four (4) inches in diameter and shall flash simultaneously. The background of the sign shall be painted red and shall be reflective. The lettering shall be painted white. In the middle, in letters seven (7) inches in height, shall be painted the words "STOP". The sign shall be lettered and painted on both sides, so that it will be visible from both the front and rear. The bottom of said sign shall be at a height of not less than forty-two (42) inches above the level of the streets, except for limited use motorcycle vending vehicles where the height to the bottom of said sign shall not be less than twenty-five (25) inches.

h.) The restrictions set forth in this section shall only be applicable to roads within Nassau County where the speed limit is thirty-five miles per hour or less.

**Section 3. Penalty for violation.** Any person who violates the provisions of this local law shall be guilty of a traffic violation. A first conviction shall be punishable by a fine of not more than one hundred dollars (\$100). A second violation committed within a period of eighteen months of the first violation shall be punishable by a fine of not less than one hundred dollars (\$100), and not more than three hundred dollars (\$300). A third or subsequent violation committed within a period of eighteen months of the first violation shall be punishable by a fine of not less than two hundred dollars (\$200), and not more than five hundred dollars (\$500).

**Section 4. Use of swing arm.** The swing arm shall not be used when the street vending vehicle is in motion, nor at anytime when the vehicle is stopped for a purpose other than vending.

**Section 5. Enforcement.** This law shall be enforced by the Nassau County Police Department, and sworn officers, as defined in Section 1-20(34) of the New York State Criminal Procedure Law, of an authorized Police Department or force of a city, town or village, or other police district within the geographic boundaries of Nassau County.

**§ 6. Separability.** If any part or portion of this local law or the application thereof to any person, entity, or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities, or circumstances.

(Local Law No. 12-1990, in effect August 28, 1990; amended by Local Law No. 2-2002, in effect April 2, 2002; amended by L.L. No. 1-2004.)

TITLE \*17

NASSAU COUNTY SPECIAL MOTOR VEHICLE USE FEE

- |         |    |  |
|---------|----|--|
| Section | 1. | Definitions  |
|         | 2. | Imposition of special use fee  |
|         | 3. | Exemptions   |
|         | 4. | Administration and collection of special use fee by Commissioner of Motor Vehicles |
|         | 5. | Judicial review  |
|         | 6. | Recovery of fee  |
|         | 7. | Severability   |

Section 1. **Definitions.** As used in this title the following terms shall have the following meanings:

- A. "Passenger motor vehicle" shall mean any motor vehicle subject to the registration fee as provided for in Section 401 subdivision six of the Vehicle and Traffic Law.
- B. "Bus" shall mean any motor vehicle as defined in Section 104 of the Vehicle and Traffic Law, as amended.
- C. "Truck" shall mean any motor vehicle as defined in Section 158 of the Vehicle and Traffic Law, as amended.

Section 2. **Imposition of Special Use Fee.**

A. Pursuant to the Vehicle and Traffic Law and Sections 1201(e) and 1202(c) of the Tax Law, a special motor vehicle use fee on vehicle registrations is hereby imposed on motor vehicles registered with Nassau County. Such special motor vehicle use fee shall be charged in accordance with the following schedule:

- 1. A fee of fifteen dollars per year for passenger motor vehicles of a type commonly used for non-commercial purposes owned by residents of Nassau County for each such vehicle weighing thirty-five hundred pounds or less;
- 2. A fee of forty dollars per year for passenger motor vehicles of a type commonly used for non-commercial purposes owned by residents of Nassau County for each such vehicle weighing in excess of thirty-five hundred pounds;
- 3. A fee of ten dollars per year for the trucks, buses and other such commercial vehicles used principally in connection with a business carried on within Nassau County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof.

B. The special motor vehicle use fee shall be paid for all registrations and renewals of registrations for which the registration fee is established pursuant to Sections 401(6)(a) or (7) of the Vehicle and Traffic Law subject to the following conditions:



1. The special motor vehicle use fee shall be applicable to an original or renewal registration transaction only, and to a re-registration transaction. If no fee for a registration is due, no special motor vehicle use fee shall be due on that transaction;
2. The applicability of such special motor vehicle use fee shall be determined based upon the information contained on the application for registration, as well as any additional documentation required by the Commissioner of Motor Vehicles;
3. The receipt for payment of the special motor vehicle use fee shall be the registration certificate, whether or not it indicates the amount of the fee paid.

### Section 3. **Exemptions.**

- A. The special motor vehicle use fee imposed by this title shall not be imposed upon any vehicle exempt from the registration fee pursuant to the Vehicle and Traffic Law.
- B. The special motor vehicle use fee imposed by this title shall not be imposed upon nonprofit, religious, charitable or educational organizations qualified for exemptions with the New York State Department of Taxation and Finance.

### Section 4. **Administration and collection of special use fee by Commissioner of Motor Vehicles.**

- A. As authorized under Section 1202(c) of the Tax Law, the special motor vehicle use fee shall be administered and collected on behalf of Nassau County by the Commissioner of Motor Vehicles or his agents.
- B. Pursuant to Section 1202(c) of the Tax Law, the Commissioner of Motor Vehicles is authorized, on behalf of Nassau County, to make the payment of such special motor vehicle use fee a condition precedent to the registration or registration renewal of any vehicle subject to the special motor vehicle use fee imposed by this title.
- C. The Nassau County Executive is hereby authorized and directed to negotiate and enter into an agreement with the Commissioner of Motor Vehicles for the implementation of this title, and such agreement shall provide for the exclusive method of collection, custody and remittal of the proceeds of the special motor vehicle use fee and for the payment by the County of the reasonable expenses incurred by the New York State Department of Motor Vehicles in connection with the administration and collection of the special motor vehicle use fee. Such agreement shall also provide that the Nassau County Comptroller shall, upon request, not more frequently than once each calendar year at a time agreed upon the State Comptroller, audit the accuracy of the payments, distributions and remittances to Nassau County pursuant to this title.
- D. The agreement referred to in subdivision C. above shall set forth, in detail, policies and procedures for collection for underpayment and for refunds. Such agreement shall also set forth procedures for deposit and retention of funds and indemnification.

Section 5. **Judicial review.** Any determination made hereunder by Nassau County shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

Section 6. **Recovery of fee.** Whenever any person fails to pay the special motor vehicle use fee due hereunder, procedures to recover such fees, as well as any applicable penalties and/or

interest, shall be the responsibility of Nassau County, as set forth in the agreement referred to in subdivision C of section 4 of this title.

Section 7. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this title or its application to any person, individual corporation, firm, partnership, entity, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this title, or in its application to the person, individual corporation, firm, partnership, entity, or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

(Title \*17, added by Local Law No. 14-1991, in effect December 17, 1991.)

## TITLE 18

### PRISONERS IN NASSAU COUNTY CORRECTIONAL CENTER - PAYMENT FOR MEDICAL OR DENTAL SERVICES IF INSURED

- |         |    |   |
|---------|----|---|
| Section | 1. | Legislative intent                                |
|         | 2. | Payment for medical or dental services if insured |
|         | 3. | Severability                                      |

Section 1. **Legislative intent.** Chapter 481 of the Laws of 1991 was enacted by the State Legislature on July 19, 1991, which Chapter authorized counties and the City of New York to require prisoners of county jails who require medical or dental services to pay for such services if insured under a Health Insurance Policy. The Board of Supervisors finds it to be in the best interest of the County of Nassau to require prisoners of the Nassau County Correctional Center who require medical or dental services to pay for such services if insured under a health insurance policy.

#### Section 2. **Payment for medical or dental services if insured.**

A. The County of Nassau shall be entitled to reimbursement for costs paid by it on behalf of inmates at the Nassau County Correctional Center for diagnoses, tests, studies or analyses for the diagnosis of a disease or disability, and care and treatment by a hospital, as defined in article twenty-eight of the Public Health Law, or by a physician, or by a dentist from any third party coverage or indemnification carried by an inmate.

B. Such third party coverage or indemnification shall first be applied against the total cost to the hospital or other provider as established in accordance with the provisions of section twenty-eight hundred seven of the Public Health Law relating to rates of payments of an individual's care and treatment, as provided herein.

Section 3. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this title or its application to the person or

circumstance directly involved in the controversy in which such judgment or order shall be rendered.

(Title 18 added by Local Law No. 4-1992, in effect March 16, 1992.)

## TITLE 19

### DISSEMINATING INDECENT CRIME MATERIAL TO MINORS

Section	1.	Legislative intent
	2.	Definitions of terms
	3.	Disseminating indecent crime materials to minors
	4.	Presumption and defense
	5.	Severability

Section 1. **Legislative intent.** The Board of Supervisors finds that in light of their limited experience, education and emotional development, children under the age of seventeen are impressionable and susceptible to the influence of violence and criminal conduct in our society. The dissemination of materials devoted to the depiction of heinous crimes and heinous criminals is a contributing factor to juvenile crime, a basic factor in impairing the ethical and moral development of our youth and a clear and present danger to the citizens of Nassau County. The County has a responsibility and an exigent interest to protect the welfare of its children and to see that they are safeguarded from influences which might prevent their growth into free and independent well-developed citizens by preventing the distribution to children of material deemed harmful to children.

The Board of Supervisors further finds that for generations, children have purchased and collected trading cards depicting war heroes, sports heroes and other luminaries whom they revere and emulate. In such form, trading cards are not harmful to children. When, however, trading cards which depict heinous crimes and heinous criminals and which appeal to the depraved interest of minors in crime are disseminated to our youth, they are harmful.

#### Section 2. **Definitions of terms.**

- A. "Minor" means any person under the age of seventeen.
- B. "Trading card" means any card, souvenir card, playing card or game card commonly known as a trading card.
- C. "Heinous crime" means murder, assault, kidnapping, arson, burglary, robbery, rape or other sexual offense.
- D. "Heinous criminal" means a person who has been convicted of a heinous crime or who has been found not criminally responsible by reason of mental disease or defect for criminal conduct concerning the commission of a heinous crime.
- E. "Harmful to minors" means that quality of any description or representation in whatever form of a heinous crime, an element of a heinous crime or a heinous criminal, when it:

1. Considered as a whole, appeals to the depraved interest of minors in crime; and
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
3. Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.

Section 3. **Disseminating indecent crime material to minors.** A person is guilty of disseminating indecent crime material to minors when, with knowledge of its character and content, he sells or loans to a minor for monetary consideration in Nassau County any trading card which depicts a heinous crime, an element of a heinous crime, or a heinous criminal and which is harmful to minors. Disseminating indecent crime material to minors shall be a Class A misdemeanor.

#### Section 4. **Presumption and defense.**

- A. A person who engages in the conduct prescribed by Section 3 of this Title is presumed to do so with knowledge of the character and content of the material sold or loaned.
- B. In any prosecution for disseminating indecent crime material to minors, it is an affirmative defense that:

1. The defendant had reasonable cause to believe that the minor involved was seventeen years old or more; and
2. Such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was seventeen years old or more.

Section 5. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

(Title 19 added by local Law No. 11-1992, in effect June 16, 1992.)

### TITLE 20\*\*

\*\* (Further amended by L.L. No. 20-02, sections 13-18.)

#### FEES FOR PROBATION DEPARTMENT SERVICES

- |         |                       |
|---------|-----------------------|
| Section | 1. Legislative intent |
|         | 2. Administrative fee |
|         | 3. Investigation fee  |
|         | 4. Fee usage          |
|         | 5. Severability       |

**Section 1. Legislative intent.** Chapter 55 of the Laws of 1992 provides the County of Nassau with the power to impose a probation administrative fee on those individuals currently serving or who shall be sentenced to a period of probation upon conviction of any crime under Article 31 of the Vehicle and Traffic Law in relation to alcohol- and drug-related motor vehicle matters as well as the power to impose a probation investigation fee for investigations ordered by the Family Court in custody and visitation proceedings. The County Legislature finds it to be in the best interests of the County of Nassau to permit the Probation Department to collect such fees from all persons sentenced to probation as has been mandated by other counties in New York State. The County Legislature further finds it to be in the best interests of the County of Nassau to increase the current probation administrative fee for probationers other than those currently serving or who shall be sentenced to a period of probation upon conviction of any crime under Article 31 of the Vehicle and Traffic Law in relation to alcohol and drug-related motor vehicle matters. The County Legislature further finds it to be in the best interests of the County of Nassau to impose fees for pre-sentence investigations, electronic monitoring, drug-testing and victim impact panel sessions.

(Amended by Local Law No. 8-1996, in effect October 4, 1996; amended by Local Law No. 11-2000, in effect March 24, 2000.)

**Section 2. Administrative, pre-sentence investigation, electronic monitoring, drug testing and victim impact panel session fees.**

A. An individual currently serving, or who shall be sentenced to a period of probation upon conviction of any crime under Article 31 of the Vehicle and Traffic Law, shall pay the Probation Department an administrative fee of thirty dollars per month for probation services from the time the probation period is commenced until such period is terminated.

B. Other than individuals covered by subdivision A., an individual currently serving, or who shall be sentenced to a period of probation shall pay the Probation Department an administrative fee of forty dollars per month for probation services from the time the probation period is commenced until said period is terminated.

C. An individual before the Court for sentencing, for whom a pre-sentence investigation is either mandatory, or ordered by the court pursuant to section 390.20 of the Criminal Procedure Law, shall pay the Probation Department a fee of three hundred dollars per investigation.

- (1) In addition to the pre-sentence investigation fees set forth above, an additional administrative fee of one hundred dollars per investigation will be assessed for an individual for whom a pre-sentence investigation is conducted by the Sex Offender/Domestic Violence Unit of the Nassau County Probation Department.

(Subdivision C amended by Local Law No. 17-2001, in effect October 31, 2001.)

D. An individual currently serving, or who shall be sentenced to a period of probation and who is required to submit to electronic monitoring by the Court pursuant to Section 65.10(4) of the Penal Law, shall pay the Probation Department a fee of three dollars per day for such electronic monitoring from the commencement of the electronic monitoring until such time as either the requirement for the electronic monitoring is terminated by the Court, the Probation Department, or the period of probation is terminated.

E. An individual currently serving, or who shall be sentenced to a period of probation, required to submit to drug testing by the Court or the Probation Department, shall pay the

Probation Department a fee of ten dollars per test from the time the probation period is commenced until such time as the period of probation is terminated.

F. An individual currently serving, or who shall be sentenced to a period of probation, required to attend, the victim impact panel by the Court of the Probation Department, shall pay the Probation Department a fee of thirty dollars per session from the time the probation period is commenced until such time as the period of probation is terminated.

G. The provisions of Subdivision 6 of Section 420.10 of the Criminal Procedure Law shall govern for the purposes of collection of any of the fees contained in subdivisions A, B, C, D, E, and F.

H. The fees authorized by this section shall not constitute nor be imposed as conditions of probation.

I. The Probation Department shall waive all or part of the fees authorized by this section, where, because of indigence of the offender, the payment of said fees would work an unreasonable hardship on the person convicted, his or her immediate family, or any other person who is dependent on such person for financial support.

J. In the event of non-payment of any fees which have not been waived, the County may seek to enforce payment in any manner permitted by law for the enforcement of a debt.

(Amended by Local Law No. 8-1996, in effect October 4, 1996; Local Law No. 11-1996, in effect November 13, 1996; amended by Local Law No. 11-2000, in effect March 24, 2000.)

### Section 3. **Investigation fee.**

A. When ordered to conduct an investigation pursuant to Section 653 of the Family Court Act involving custody and visitation proceedings, the Probation Department shall receive an investigation fee of not less than fifty dollars and not more than five hundred dollars from the parties in such proceeding for performing such investigation.

B. Such fee shall be based on the parties' ability to pay the fee and the schedule for payment shall be fixed by the court issuing the order for investigation, pursuant to the guidelines issued by the Director of the Division of Probation and Correctional Alternatives.

C. The court shall apportion the fee between the parties based upon the respective financial circumstances of the parties and the equities of the case.

D. The court, at its discretion, may waive the investigation fee when the parties lack sufficient means to pay the fee.

Section 4. **Fee usage.** Fees collected pursuant to this Title shall be utilized for local probation services.

Section 5. **Severability.** If any clause, sentence, paragraph subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

(Title 20 added by Local Law No. 10-1992, in effect June 15, 1992.)

## TITLE 21

### CERTAIN PERSONS CONVICTED OF VIOLATING NASSAU COUNTY LOCAL LAWS OR ORDINANCES REIMBURSEMENT OF ACTUAL INVESTIGATORY, AND INCARCERATION COSTS

Section	1.	Legislative intent
	2.	Definitions
	3.	Investigatory costs
	4.	Incarceration costs
	5.	Waiver of investigatory and incarceration costs
	6.	Severability

Section 1. **Legislative intent.** With the rising costs of both investigation of violations of Nassau County local laws or ordinances as well as post-conviction incarceration costs at the Nassau County Correctional Center, it is in the best interests of the County of Nassau to require certain persons who are convicted of violating a Nassau County local law or ordinance as well as those persons who are sentenced to serve a term of incarceration in the Nassau County Correctional Center for violating a Nassau County local law or ordinance to reimburse the County of Nassau for all actual costs of investigation and incarceration.

#### Section 2. **Definitions.**

- A. "Investigatory costs" shall mean all actual costs incurred by the County of Nassau, its agencies and departments in obtaining a conviction against a person for a violation of a Nassau County local law or ordinance.
- B. "Incarceration costs" shall mean all actual costs incurred by the Sheriff's Department in housing a person convicted of a violation of a Nassau County local law or ordinance including, but not limited to, room, board, medical expenses, educational expenses, etc.
- C. "Person" shall mean a human being, and where appropriate, a public or private corporation, an unincorporated association or a partnership.

Section 3. **Investigatory costs.** A person convicted of a violation of a Nassau County local law or ordinance shall reimburse the County of Nassau for all actual investigatory costs incurred in conjunction with the investigation and prosecution of such violation of a Nassau County local law or ordinance. All monies reimbursed shall be proportionately appropriated to each County agency or department that incurred an investigatory cost.

Section 4. **Incarceration costs.** Any person convicted of a violation of a Nassau County local law or ordinance who is sentenced to serve a term of incarceration in the Nassau County Correctional Center shall reimburse the Sheriff's Department for all actual costs incurred in conjunction with the incarceration of such person. All monies reimbursed shall be appropriated to the Sheriff's Department.

Section 5. **Waiver of investigatory and incarceration costs.** The Nassau County Probation Department may waive all or part of the investigatory costs and incarceration costs where, because of the indigence of the person convicted of a violation of a Nassau County local law or ordinance, the reimbursement of said costs would work an unreasonable hardship on the

person convicted, his or her immediate family or any other person who is dependent on such individual for financial support.

Section 6. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

(Title 21 added by Local Law No. 16-1992, in effect October 26, 1992.)

## TITLE 21-A

### CERTAIN PERSONS WHO ARE INCARCERATED IN THE NASSAU COUNTY CORRECTIONAL CENTER – PAYMENT OF UNREIMBURSED INCARCERATION COSTS

Section	1.	Legislative intent
	2.	Definition
	3.	Incarceration costs
	4.	Waiver of incarceration costs
	5.	Event of non-payment
	6.	Severability

Section 1. **Legislative intent.** With the rise of incarceration costs at the Nassau County Correctional Center, it is in the best interests of the County of Nassau to require certain persons who are incarcerated in the Nassau County Correctional Center and are subsequently convicted of the crime which led to their incarceration to pay the County of Nassau for actual unreimbursed costs of incarceration.

Section 2. **Definition.** “Incarceration costs” shall mean actual costs incurred by the Sheriff’s Department in housing a person convicted of a crime, including, but not limited to, room, board and educational expenses.

Section 3. **Incarceration costs.** Any person convicted of a crime which led to his or her incarceration in the Nassau County Correctional Center shall pay the County of Nassau for pre-conviction and post-conviction actual unreimbursed costs incurred in conjunction with the incarceration of such person.

Section 4. **Waiver of incarceration costs.** The sheriff of the County of Nassau may waive all or part of the incarceration costs where, because of the indigence of the person sentenced, the payment of said costs would work an unreasonable hardship on the person convicted, his or her immediate family or any person who is dependent on such individual for financial support.

Section 5. **Event of non-payment.** In the event of non-payment of any costs which have not been waived, the County of Nassau may seek to enforce payment in any manner permitted by law for enforcement of a debt.

(Added by Local Law No. 12-1996, in effect November 25, 1996.)



## TITLE 22

### EMPLOYEE COMMUTE OPTIONS (ECO) PROGRAM

Section	1.	Legislative intent
	2.	Definitions
	3.	Registration and correspondence
	4.	Average Passenger Occupancy (APO) Surveys
	5.	Calculation of the Average Passenger Occupancy (APO)
	6.	Compliance plan and maintenance report filing
	7.	Compliance plan and maintenance report review process
	8.	Local administrative fees
	9.	Auditing and recordkeeping
	10.	Penalties
	11.	Employer petitions
	12.	Rules and regulations
	13.	SEQRA findings
	14.	Severability

Section 1. **Legislative Intent.** Section 182(d)(1)(B) of the Federal Clean Air Act Amendments, 42 U.S.C. section 7511a(d)(1)(B), as amended by Public Law 101-549, November, 15, 1990, 104 Stat. 2399, requires states having severe nonattainment areas for ozone to submit a State Implementation Plan revision requiring employers in such nonattainment areas to implement programs to reduce work related vehicle travel by employees.

The United States Environmental Protection Agency (EPA) has designated the County of Nassau as a severe nonattainment area for ozone within New York State.

Pursuant to section 14(31) of the Transportation Law the New York State Department of Transportation has promulgated regulations to implement the Employee Commute Options (ECO) Program of the Federal Clean Air Act Amendments.

In general, employers of one hundred or more persons at worksites in a severe nonattainment area for ozone, as designated by the EPA, shall increase the Average Passenger Occupancy (APO) per Vehicle of its employees in commuting trips between home and the worksite during peak travel periods to at least twenty-five (25) percent above the Average Vehicle Occupancy (AVO) Standard for all such trips. Such Standard shall be established in accordance with the Federal Clean Air Act Amendments and with guidance issued by the EPA (entitled "Employee Commute Options Guidance," United States Environmental Protection Agency, Office of Air and Radiation, December, 1992).

The New York State Transportation Law and the regulations promulgated pursuant thereto require the ECO Program to be administered by New York City and the Counties which are wholly or partially designated as severe nonattainment areas for ozone.

The Board of Supervisors finds it to be in the best interests of the County of Nassau to enact a Local Law for implementation of the ECO Program consistent with Section 14(31)(b), (c) and (d) of the New York State Transportation Law and 17 NYCRR Part 38.

Section 2. **Definitions.** For the purposes of the ECO Program, the definitions set forth in 17 NYCRR Part 38 shall apply, provided, however, that in this Chapter:

- A. "Board" means the three member body established to review petitions filed by affected employers to appeal the decisions of the Local Administrative Agency.
- B. "Department" shall mean the Nassau County Department of Planning;
- C. "Local Administrative Agency" shall mean the Nassau County Department of Planning, Division of Transportation.

**Section 3. Registration and correspondence.** In accordance with the provisions of 17 NYCRR Part 38.3, Affected employers shall register with the Local Administrative Agency or notify the Local Administrative Agency of the reasons why that employer may be exempt from the requirements of this Chapter, and shall comply with requirements with respect to correspondence set forth therein.

**Section 4. Average Passenger Occupancy (APO) Surveys.** In accordance with the provisions of 17 NYCRR Part 38.5, Affected Employers shall conduct Worksite APO Surveys, utilizing forms provided by the Local Administrative Agency or may utilize other APO Survey forms upon approval of the Local Administrative Agency and report the results of such worksite APO Survey to the Local Administrative Agency, as part of the required Compliance Plan or Maintenance Report.

**Section 5. Calculation of the Average Passenger Occupancy (APO).** In accordance with the provisions of 17 NYCRR Part 38.6, Affected Employers shall calculate the worksite APO and strive to achieve the target APO.

**Section 6. Compliance Plan and Maintenance Report filing.**

- A. In accordance with the provisions of 17 NYCRR Part 38.7, each affected employer shall prepare and file Initial Compliance Plans and Compliance Plan Updates or Maintenance Reports.
- B. For each affected worksite, by November 15, 1994, the affected employer shall file with the Local Administrative Agency an Initial Compliance Plan for each affected worksite.
- C. An employer that becomes an affected employer after April 6, 1994 shall have six months from the date it becomes an affected employer to file an Initial Compliance Plan and two years from filing to implement its Initial Compliance Plan.

**Section 7. Compliance Plan and Maintenance Report review process.** In accordance with the provisions of 17 NYCRR Part 38.8:

- A. Affected employers shall implement approved plans or reports and revise rejected plans or reports.
- B. Affected employers may appeal plan or report rejection by the Local Administrative Agency.

**Section 8. Local administrative fees.**

- A. Each affected employer shall be required to submit its annual fee on the date its Initial Compliance Plan is due to be submitted and thereafter on each subsequent anniversary of such date.
- B. Fees are as follows:

- 1) for each employer's worksite with more than one thousand (1,000) affected employees, the fee shall be two thousand dollars (\$2,000.00).
- 2) for each employer's worksite with five hundred and one (501) to one thousand (1,000) affected employees, the fee shall be twelve hundred dollars (\$1,200.00).
- 3) for each employer's worksite with two hundred fifty one (251) to five hundred (500) affected employees, the fee shall be six hundred dollars (\$600.00).
- 4) for each employer's worksite with one hundred (100) to two hundred fifty (250) affected employees, the fee shall be three hundred dollars (\$300.00).

C. Fees shall be reduced by fifty percent (50%) of the amount due for all affected employers submitting plans not later than 90 days prior to the date a submission is due. Fees shall be reduced by thirty-three and one third percent (33-1/3%) of the amount due for all affected employers submitting plans not later than 60 days prior to the date a submission is due. Fees shall be reduced by twenty percent (20%) of the amount due for all affected employers submitting plans not later than 30 days prior to the date a submission is due. Fee reductions shall be available only in the year when the employer is required to file a plan or report pursuant to 17 NYCRR Part 38.

D. Fees shall be in the form of a company check, bank check, money order, or other form of payment acceptable to the Local Administrative Agency made payable to the Nassau County Treasurer.

**Section 9. Auditing and recordkeeping.** In accordance with the provisions of 17 NYCRR Part 38.10:

- A. Affected employers shall provide access to the Local Administrative Agency for auditing to verify compliance with the provisions of this Chapter.
- B. Affected employers shall facilitate the audit functions by maintaining copies of relevant documents.

**Section 10. Penalties.**

- A. The Local Administrative Agency shall send a notice of violation of any provision of this chapter by registered, certified or other form of mail documenting receipt to the affected employer. Such notice shall specify the nature of the violation and the fine due.
- B. Failure of an affected employer to comply with the requirements set forth in the rules of the ECO Program as specified in NYCRR Part 38.11(a) shall constitute a violation of such rules. The civil penalty for each violation shall be fifty cents (50¢) per employee per day for each affected worksite, not to exceed five hundred dollars (\$500.00) per day for each affected worksite.
- C. Failure of an affected employer to register pursuant to 17 NYCRR Part 38.3(b) shall constitute a violation of such rules. The penalty for such violation shall be fifty cents (50¢) per employee per day for each affected worksite, not to exceed five hundred dollars (\$500.00) per day for each affected worksite.

## Section 11. **Employer petitions.**

A. In accordance with the provisions of 17 NYCRR Part 38.12, affected employers shall have the opportunity to file a petition appealing a Local Administrative Agency's decision pertaining to the following issues:

- 1) The rejection of a Compliance Plan for failure to convincingly demonstrate that the Target CPO will be achieved.
- 2) The rejection of a Maintenance Report for failure to convincingly demonstrate that the Target APO will be maintained.
- 3) The imposition of a penalty in accordance with the provisions of 17 NYCRR Part 38.

B. Petitions to appeal by affected employers shall be reviewed by a three member Board appointed by the County Executive subject to confirmation by the Board of Supervisors.

- 1) All appointees to membership to the Board shall have a term of three years, except that of those first appointed, one member shall be appointed for a term of three (3) years, one member shall be appointed for a term of two (2) years and one member shall be appointed for a term of one (1) year.
- 2) Board members shall serve without compensation but shall be entitled to receive all reasonable expenses actually incurred in the performance of their duties.
- 3) The Board shall be the final administrative authority for the enforcement and administration of this Title.

C. The procedure for appeal to the Board shall be as follows:

- 1) An affected employer wishing to file a petition of appeal shall submit such request to the Board within fifteen (15) days of receipt of the notification to be appealed from.
- 2) Notice of hearing shall be sent by registered or certified mail and shall state the date and place of hearing. The affected employer shall be heard either in person or by counsel and may offer evidence on its behalf. A stenographic record of the hearing shall be taken. The Board shall make a written report of findings and issue an order in determination of the question presented for appeal. Both the affected employer and the Local Administrative Agency shall be notified of such order.
- 3) For the purpose of this Title, the Board may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of the appeal, pursuant to section twenty two hundred thirteen of the County Government Law of Nassau County.

Section 12. **Rules and regulations.** The Local Administrative Agency is hereby authorized, empowered and directed to promulgate and issue such rules and regulations as the

Local Administrative Agency may deem necessary to implement and carry out this Title and 17 NYCRR Part 38.

Section 13. **SEQRA findings.** The Board of Supervisors as lead agency has determined that in conformance with the SEQRA findings of the New York State Department of Transportation, the proposed action described herein is an unlisted action and will not have a significant effect on the environment, and a Draft Environmental Impact Statement will not be prepared.

Section 14. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

(Title 22 added by Local Law No. 3-1994, in effect May 23, 1994.)

## TITLE 23

### AUTOMATED TELLER MACHINE SECURITY PROTECTION ACT FOR BANK CUSTOMERS

Section	1.	Legislative intent
	2.	Definitions
	3.	Security measures
	4.	List of facilities
	5.	Violations and penalties
	6.	Enforcement
	7.	Exemption
	8.	Applicability
	9.	Severability

Section 1. **Legislative intent.** The Board of Supervisors hereby finds and determines that the use of automated teller machines (ATM's) to conduct banking transactions has become a fact of daily life for many Nassau County residents; that, because of the location of many of these ATM's and the time of day and night they are used there is a potential risk of robbery and other related crimes for users of these machines; and that currently there are no standards for security at ATM facilities.

#### Section 2. **Definitions.**

A. "Access code" shall mean a series of numbers or letters, unique to each banking customer, which when entered into an automated teller machine, grant the customer entry to the customer's account records.

B. "Automated teller machine" shall mean a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to:

account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

C. "Automated teller machine card" shall mean an instrument authorized by a bank which permits a customer to gain access to an automated teller machine facility.

D. "Automated teller machine facility" shall mean the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

E. "Bank" shall mean any banking corporation which operates, owns, or controls and automated teller machine facility within the County of Nassau.

F. "Adequate lighting" with respect to an open and operating automated teller machine facility located on an exterior wall of a building open to the outdoor air, and any defined parking area, shall mean lighting during nighttime hours according to the following standards:

1. minimum of ten (10) candlelight power at the face of the automated teller machine and extending in an unobstructed direction outward five (5) feet; and
2. a minimum of two (2) candlefoot power within fifty (50) feet from all unobstructed directions from the face of the automated teller machines. If such machine is located within ten (10) feet of the corner of the building and the automated teller machine facility is generally accessible from the adjacent side, there shall be a minimum of two (2) candlefoot power along the first forty (40) unobstructed feet of the adjacent side of the building.

G. "Adequate lighting" with respect to defined parking areas shall mean a minimum of two (2) candlefoot power in that portion of the parking area within the sixty (60) feet of the automated teller machine facility.

H. "Adequate lighting" with respect to an automated teller machine facility located within the interior of a building shall mean lighting on a twenty-four (24) hour basis, which permits a person entering the facility to readily and easily see all persons at the entry door of such facility.

I. "Defined parking area" shall mean that portion of any parking area for bank customer parking which is:

1. contiguous to any paved walkway or sidewalk within fifty (50) feet of an automated teller machine facility;
2. regularly, principally, and lawfully used for parking by users of the automated teller machine facility while conducting transactions at such automated teller machine facility during nighttime hours; and
3. owned or leased by the operator of the automated teller machine facility, or owned or otherwise controlled by the party leasing the automated teller machine facility site to the operator. The term does not include any parking area which is not open or regularly used for parking by the users of the automated teller machine who are conducting automated teller machine transactions during nighttime hours. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed.

- J. "Nighttime hours" shall mean the period of time beginning at sunset, and ending at sunrise.
- K. "Candlefoot power" shall mean the light intensity of candles on a horizontal place at thirty-six (36) inches above ground level and five (5) feet in front of the area to be measured.
- L. "Regular banking hours" shall mean the hours a branch is normally open for normal transactions of business with the banking public.

### Section 3. **Security measures.**

A. A bank shall maintain the following security measures with respect to each of its automated teller machine facilities:

1. a surveillance camera or cameras which shall view and record all persons entering an automated teller machine facility located within the interior of a building, or which shall view and record all activity occurring within a minimum of three (3) feet in front of an automated teller machine located on an exterior wall of a building open to the outdoor air. Such camera or cameras need not view and record banking transactions made at the automated teller machine. The recordings made by such cameras shall be preserved by the bank for at least thirty (30) days;
2. entry doors equipped with locking devices which permit entry to such facility only to persons using a magnetic-strip plastic card or similar device issued by a bank for that purpose;
3. adequate lighting;
4. a reflective mirror or mirrors placed in a manner which permits a person entering the automated teller machine facility to view areas within such facility which are otherwise concealed from plain view; and
5. a clearly visible sign, which at a minimum states:
  - a) the activity within the automated teller machine facility is being recorded by surveillance camera;
  - b) customers should close the entry door completely upon entering if the automated teller machine facility is located within the interior of a building;
  - c) customers should not permit entrance to any unknown person at any time after regular banking hours when an automated teller machine facility located within the interior of a building is available to banking customers; and
  - d) customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility.

B. Subdivisions two and four of Paragraph A and subsections b and c of subdivision 5 of Paragraph A shall not apply to any automated teller machine facility located on an exterior wall of a building open to the outdoor air.

### Section 4. **List of facilities.**

A. Any bank which operates an automated teller machine facility shall file a list of such facilities with the Office of Consumer Affairs, including the street addresses, intersecting streets, hours of operation, method of security, and method of surveillance at each facility, and the telephone number of the bank's security department.

B. Within thirty (30) days after the effective date of this Title, and each year thereafter, every bank which has an automated teller machine facility, which is in operation on such date or on such date every year thereafter, shall submit a written report to the Office of Consumer Affairs on a form prescribed by the Office, indicating that such automated teller machine facility is in compliance with the provisions of this Title.

#### Section 5. **Violations and penalties.**

A. A bank found to be in willful violation of any provision of Section 3 of this Title shall be subject to a civil penalty of not more than two hundred fifty dollars (\$250.00). Each such willful violation of any provision of section 3 of this Title with respect to a particular automated teller machine facility shall be considered a separate violation thereof.

B. Any bank found to be in willful violation of any provision of section 3 of this Title shall also correct the violation within ten (10) days after such finding. Failure to correct the violation within ten (10) days after such finding shall subject the bank to an additional civil penalty of not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000.00) for each report.

C. Any bank found to be in willful violation of section 4 of this Title shall be liable for a civil penalty of not more than five hundred dollars (\$500.00) for each automated teller machine for which a report has not been filed. Any bank which makes a material false statement or material omission in any report filed pursuant to section 4(B) of this Title shall be liable for a civil penalty of not more than one thousand dollars (\$1,000.00) for each report.

D. A proceeding to recover any civil penalty authorized to be imposed pursuant to this law shall be commenced by the service of a notice of violation which shall be returnable to the Commissioner of the Office of Consumer Affairs, who, after due notice and an opportunity for a hearing, shall be authorized to impose the civil penalties prescribed by this Title.

Section 6. **Enforcement.** The Office of Consumer Affairs shall be authorized to enforce this Title.

Section 7. **Exemption.** The provisions of this Title shall not apply to any unenclosed automated teller machine located in any building, structure, or space whose primary purpose or function is unrelated to banking activities, including, but not limited to supermarkets, airports, and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

Section 8. **Applicability.** This Title shall apply to actions occurring on or after the effective date of this Title.



Section 9. **Severability.** If any clause, sentence, paragraph, subdivision, section, or part of this Title or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Title, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Title 23 added by Local Law No. 9-1994, in effect January 1, 1995.)

## TITLE 24

### NASSAU COUNTY HOTEL AND MOTEL OCCUPANCY TAX

Section	1.	Legislative intent
	2.	Definitions
	3.	Imposition of hotel and motel occupancy tax
	4.	Contract with tourism promotion agency
	5.	Disposition of tax revenues
	6.	Exemptions
	7.	Judicial review
	8.	Severability

Section 1. **Legislative intent.** Chapter 511 of the laws of 1994 as amended by Chapter 179 of the Laws of 2000 authorized and empowered the County of Nassau to impose a hotel and motel occupancy tax in Nassau County not to exceed three percent of the per diem rental rate for each room. The revenues resulting from the imposition of the tax shall be used to promote tourism and convention business in Nassau County as well as to provide for care, maintenance and interpretation for the general public of certain structures and areas under the jurisdiction of the Nassau County Department of Recreation and Parks for operating or program support of non-profit museums and cultural organizations in Nassau County and to fulfill the general obligations of Nassau County. The County Legislature finds it to be in the best interest of the County of Nassau to impose the hotel and motel occupancy tax for these purposes.

(Amended by Local Law No. 9-1996, in effect October 22, 1996; amended by Local Law No. 26-2000, in effect July 31, 2000.)

Section 2. **Definitions.** As used in this Title, the following terms shall have the following meanings:

- A. "Hotel" or "Motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns, cabins, cottages, campgrounds, tourist homes and convention centers.
- B. "Permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

Section 3. **Imposition of hotel and motel occupancy tax.**

A. There is hereby imposed a hotel and motel occupancy tax in the County of Nassau at a rate of three percent of the per diem rental rate for each room, provided, however, that such tax shall not be applicable to a permanent resident of such hotel and motel.

(Amended by Local Law No. 26-2000, in effect July 31, 2000.)

B. Such tax shall be collected and administered by the County Treasurer by such means and in such manner as other taxes which are now collected and administered.

C. Within thirty days after the effective date of this Title, or in the case of owners commencing business after such effective date, within ten days after such commencement or opening, every owner shall file with the County Treasurer a certificate of registration in a form prescribed by the County Treasurer. The County Treasurer shall issue to each owner a certificate of authority empowering such owner to collect the tax from the occupant thereof. The County Treasurer shall issue to each owner a duplicate certificate for each additional hotel or motel owned by such owner. Each certificate or duplicate shall state the hotel or motel to which it was applicable as well as the sales tax number for the hotel or motel. Such certificates of authority shall be prominently displayed by the owner in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and non-transferable and shall be surrendered to the County Treasurer upon the cessation of business at the hotel or motel named or upon its sale or transfer. Failure to register with the County Treasurer as required by this Title shall result in the imposition of a fine of one hundred dollars for each day of non-registration for each hotel or motel not so registered.

D. Such tax shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the County of Nassau imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge.

E. The owner of the hotel or motel room occupied or the person entitled to be paid the rent or charge for the hotel or motel room occupied shall file returns with and make payment of the tax to the County Treasurer on a quarterly basis on the first day of each February, May, August and November during the effective period of this Title. Such returns shall be made on forms provided by the County Treasurer.

F. The owner's books and records relating to the returns as set forth in subdivision E above may be requested by the County Treasurer for auditing purposes.

G. The imposition of the hotel and motel occupancy tax as authorized by this Title shall expire on December thirty-first, two thousand seven.

(Amended by Local Law No. 9-1996, in effect October 11, 1996; amended by Local Law No. 26-2000, in effect July 31, 2000; amended by Local Law 3 -2006.)

H. The County Treasurer is hereby authorized to promulgate any rules and regulations deemed necessary to effectuate the purposes and provisions of this Title and consistent therewith.

Section 4. **Contract with tourism promotion agency.** The County of Nassau shall enter into a contract with a tourism promotion agency to administer programs designed to develop, encourage, solicit and promote convention business and tourism within the county. The promotion

of convention business and tourism shall include any service, function or activity, whether or not performed, sponsored or advertised by the tourism promotion agency with the intent to attract transient guests to the county.

**Section 5. Disposition of tax revenues.** All revenues resulting from the imposition of the tax payable hereunder shall be paid into the General Fund of the County of Nassau and shall be distributed as appropriated by the County Legislature pursuant to the following formula:

A. Twenty-five percent thereof shall be distributed as follows:

- (i) Sixty-six and two-thirds percent of such twenty-five percent of revenues collected shall be delivered to the tourism promotion agency which the County of Nassau contracts with pursuant to Section 4 of this Title.
- (ii) Thirty-three and one-third percent of such twenty-five percent of revenues collected shall be utilized by the County of Nassau in support of cultural programs and activities relevant to the continuation and enhancement of the tourism industry in the following manner:
  - 1. Twenty-one percent of such twenty-five percent of revenues collected shall be used for the care, maintenance, and interpretation for the general public of the historic structures, sites and unique natural areas that are managed by the Nassau County Department of Recreation and Parks. All sites and activities so funded shall be opened to tourists on a regular and predictable basis.
  - 2. Twelve and one-third percent of such twenty-five percent of revenues collected shall be used for ongoing operating or program support of those non-profit museums and cultural organizations in Nassau County so designated by the County Executive or by any County department, agency or office authorized by the County Executive to make such designation, subject to final approval of the County Legislature.
  - 3. Schedules of availability of all historic and cultural activities and events funded from any part of these revenues shall be provided to the aforementioned tourist promotion agency which is contracted with by the County of Nassau so as to enhance tourism promotion and tourist visitation.

B. Seventy-five percent thereof shall be distributed as follows:

a. For the fiscal year two thousand six: (i) fifty percent of such seventy-five percent of revenues from the hotel and motel occupancy tax shall be paid into the treasury of the County of Nassau and shall be dedicated to the fulfillment of the general obligations of the County, and (ii) fifty percent of such seventy-five percent of revenues shall be used by the County through the Department of Parks, Recreation and Museums to improve and advance the marketability of cultural and historical attractions; provided however that two hundred fifty thousand dollars thereof shall be used to provide assistance to the historically restored village of Old Bethpage and existing museums in Nassau County for the expenses of new program development and new exhibit development, and provided further, that such two hundred fifty thousand dollars shall be awarded pursuant to applications for assistance upon application by Old Bethpage Village or any such museum to the

Department of Parks, Recreation and Museums, which shall make a determination thereon in consultation with the advisory board to such Department pursuant to subdivision C of this section. All monies paid into the treasury of the County pursuant to this clause (ii) and remaining therein at the end of the fiscal year shall continue to be used pursuant to this clause (ii) in the following fiscal year.

b. For the fiscal year two thousand seven, (i) twenty-five percent of such seventy-five percent of revenues shall be paid into the treasury of the County of Nassau and shall be dedicated to the fulfillment of the general obligations of the County, and (ii) seventy percent of such seventy-five percent of revenues shall be used by the County through the Department of Parks, Recreation and Museums to improve and advance the marketability of cultural and historical attractions; provided however that two hundred fifty thousand dollars thereof shall be used to provide assistance to the historically restored village of Old Bethpage and existing museums in Nassau County for the expenses of new program development and new exhibit development, and provided further, that such two hundred fifty thousand dollars shall be awarded pursuant to applications for assistance upon application by Old Bethpage Village or any such museum to the Department of Parks, Recreation and Museums, which shall make a determination thereon in consultation with the advisory board to such Department pursuant to subdivision C of this section. All monies paid into the treasury of the County pursuant to this clause (ii) and remaining therein at the end of the fiscal year shall continue to be used pursuant to this clause (ii) in the following fiscal year.

(Amended by Local Law No. 9-1996, in effect October 11, 1996; amended by Local Law No. 26-2000 in effect July 31, 2000; amended by Local Law No. 3-2006 with effective date as follows: "This local law shall become effective upon the enactment by the New York State Legislature of legislation amending the Tax Law to extend the authorization of the hotel and motel occupancy tax and provide for its distribution and shall be deemed to have been in full force and effect on and after January 1, 2006")

C. The Department of Parks, Recreation and Museums shall, pursuant to subdivision six of section twelve hundred two-q of the Tax Law, accept applications for assistance from the two hundred fifty thousand dollars allocated pursuant to clause (ii) of paragraphs (a) and (b) of subdivision B of this section. Awards shall be made from such two hundred fifty thousand dollars by the Department of Parks, Recreation and Museums in consultation with an advisory board to such department consisting of seven members, each of whom shall serve for a term of two years. Three members shall be appointed by the County Executive, two members by the Presiding officer of the Legislature, and two members by the Minority Leader of the Legislature. The County Executive shall designate the Chair.

(Subdivision C added by Local Law No. 3-2006 with effective date as follows: "This local law shall become effective upon the enactment by the New York State Legislature of legislation amending the Tax Law to extend the authorization of the hotel and motel occupancy tax and provide for its distribution and shall be deemed to have been in full force and effect on and after January 1, 2006")

**Section 6. Exemptions.** This Title shall not authorize the imposition of the hotel and motel occupancy tax upon any transaction, by or with any of the following:

A. The State of New York, or any public corporation (including a public corporation created pursuant to agreement or contract with another state or the dominion of Canada), improvement district or other political subdivision of the state.

B. The United States of America, insofar as it is immune from taxation.

C. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

#### Section 7. **Judicial review.**

A. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the Civil Practice Law and Rules if application therefor is made to the supreme court within thirty-days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the Civil Practice Law and Rules shall not be instituted unless:

1. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of the State of New York as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or
2. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

B. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the County Treasurer, and the County Treasurer shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the County Treasurer in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

C. Except of the case of willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

D. Any person failing to file a return or to pay any tax to the County Treasurer within the time required by this Title shall be subject to a penalty of five percentum of the amount of the tax due; plus interest at the rate of one percentum of such tax for each month or fraction thereof of delay commencing the first month after such return was required to be filed or such tax became due. Such penalties and interest shall be paid and disposed of in the same manner as other revenues pursuant to this Title.

Section 8. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or ordered shall be rendered.

(Title 24 added by Local Law No. 12-1994, in effect November 1, 1994.)

## TITLE 25

### SALE OF CERTAIN DIETARY SUPPLEMENTS AND OTHER PRODUCTS CONTAINING EPHEDRINE

Section	1.	Legislative intent
	2.	Definitions of terms
	3.	Sale of certain dietary supplements and other products containing Ephedrine
	4.	Penalty for violation
	5.	Severability

Section 1. **Legislative intent.** The Legislature hereby finds that certain ephedrine-containing products pose significant health risks and that consumers should be protected from the sale of such products within Nassau County. The Legislature further finds that possible adverse effects of ephedrine include, but are not limited to, heart attacks, strokes, seizures, psychosis and death, and also include clinically less significant effects that may indicate the potential for more serious effects, such as dizziness, headaches, gastrointestinal distress and heart palpitations. As a result, the Legislature finds that the sale, labeling, and promotion of ephedrine-containing products should be registered and, in addition, ephedrine-containing products should not be sold to those under the age of 18. The Legislature hereby enacts this law in furtherance of its responsibility to protect the health and welfare of its residents.

#### Section 2. **Definitions of terms.**

- A. “Dietary supplement” or “drug” means a dietary supplement or drug as defined in 21 U.S.C. section 321.
- B. “Ephedrine” means ephedrine and any natural or botanical or synthetic form of ephedrine including but not limited to Ephedra, Ephedra Sinica, Ma Huang and Epitonin, or any extract thereof.
- C. “Person” means a human being, and where appropriate, a public or private corporation and unincorporated association or a partnership.

#### Section 3. **Sale of certain dietary supplements and other products containing ephedrine.**

- A. No person shall sell or cause to be sold any product containing ephedrine unless such product:
  - (i) is an FDA-approved drug product; or
  - (ii) is an over-the-counter drug product which is in compliance with an FDA-issued proposed monograph, tentative final monograph or final monograph; or
  - (iii) is a dietary supplement of food which:
    - (a) is intended and labeled for use as a weight loss aid or sports nutrition product.
    - (b) is labeled for sale to and use by only those 18 years of age or over.

- B. No ephedrine-containing products shall be sold to people under 18 years of age.
- C. No ephedrine-containing product shall be labeled for sale or distribution with labels that claim or imply that such ephedrine-containing products produce such effects as euphoria, increased sexual sensations, heightened awareness, increased energy, legal “highs” and other similar effects.

Section 4. **Penalty for violation.** Any person who violates section three of this Title shall be guilty of a class A misdemeanor punishable by a fine not to exceed \$1000 or imprisonment not to exceed one year, or both.

Section 5. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstances directly involved in the controversy in which such judgment or order shall be rendered.

(Added by Local Law No. 3-1996, in effect May 16, 1996.)

## TITLE 26

### AGREEMENTS BETWEEN THE COUNTY OF NASSAU AND THE METROPOLITAN TRANSPORTATION AUTHORITY, THE LONG ISLAND RAIL ROAD COMPANY AND THE METROPOLITAN SUBURBAN BUS AUTHORITY

- |         |    |                                |
|---------|----|--------------------------------|
| Section | 1. | Findings                       |
|         | 2. | Mass transportation agreements |

Section 1. **Findings.** The County Legislature of the County of Nassau (the “County”) hereby finds and declares that a sound mass transportation infrastructure system, and the provision of mass transportation services to the public at adequate levels and reasonable cost, are essential to the County’s economy and the well-being of its residents. The County Legislature further finds that: the mass transportation services provided by the Metropolitan Transportation Authority (the “Authority”), Long Island Rail Road Company (“LIRR”) and Metropolitan Suburban Bus Authority (“LI Bus”) are an integral part of the County’s mass transportation system; the county is situated within the metropolitan transportation district served by the Authority; the LIRR, which is a subsidiary of the Authority, operates an extensive commuter railroad network throughout Long Island, with approximately 65% of its riders boarding in the County; and LI Bus, which is also a subsidiary of the Authority, operates, maintains and repairs omnibus facilities in the furnishing of omnibus fixed-route and paratransit service to the people of the County under a lease with the County, pursuant to which the County makes annual financial contributions to LI Bus for certain operating and capital costs.

The County further hereby finds and declares that a commitment on the part of the County to jointly undertake various mass transportation capital projects (as that term is defined in General Municipal Law section 119-q) with the Authority, LIRR and LI Bus will help ensure that the people of the County continue to be provided with necessary and convenient mass transportation services. In this regard, General Municipal Law, section 119-r expressly authorizes the County,



*inter alia*, to adopt local laws authorizing (i) the acquisition, construction, reconstruction, improvement, equipment, maintenance or operation of one or more mass transportation projects; and (ii) the making of contracts with a public authority, including the authority, LIRR, and LI Bus, for the equipment, maintenance or operation of a mass transportation facility owned, acquired, constructed, reconstructed or improved by it. The County Legislature, therefore, hereby determines that it is in the best interests of the people of the County to adopt this local law pursuant to section 119-r of the General Municipal Law authorizing the joint undertaking of certain mass transportation capital projects with the Authority, LIRR and LI Bus and providing for the use and operation of those projects by the Authority, LIRR and LI Bus for the benefit of the residents of the County.

Section 2. **Mass transportation agreements.** Pursuant to the Authority conferred upon the County by section 119-r of the General Municipal Law, the County is hereby authorized from time to time to enter into one or more agreements, and amendments thereto, and amendments to existing agreements, with the Authority, LIRR and/or LI Bus, or any or all of them, or any other public authority, with respect to mass transportation facilities or capital projects.  
(Added by Local Law No. 15-1996, in effect December 18, 1996.)

## TITLE 26\*

### BOX CUTTERS – PROHIBITION ON SALE TO MINORS, OPEN DISPLAYS AND POSSESSION ON SCHOOL PREMISES

\*(So in original. Should read “Title 27”.)

Section	1.	Legislative intent.
	2.	Definitions.
	3.	Sale to minors.
	4.	Open display.
	5.	Possession on school premises.
	6.	Penalties.
	7.	Separability.

Section 1. **Legislative intent.** This local law is intended to promote the health and welfare of Nassau County residents, and protect the safety of our young people and our school environment. This new Title 26 prohibits the sale or transfer of “box cutters” to minors and prohibits the possession of box cutters on school grounds by those 21 years of age except under certain circumstances.

The law also regulates the display of “box cutters” for sale.

The Nassau County Legislature finds that while box cutters are valuable tools if used as intended, they have become weapons in the hands of those young people that act outside the law. The very features that make them practical tools also make them extremely dangerous if misused. Box cutters, which usually consist of a razor blade or sharp metal edge contained in a protective casing, are compact and easily concealed. Moreover, with their small size and packaging, they are prone to shoplifting when offered for sale in an open display.

Section 2. **Definitions.** For purposes of this Title:

- a. “Box cutter” means any knife consisting of a razor blade, retractable, non-retractable, or detachable in segments, attached to or contained within a plastic or metal housing, including, but not limited to, utility knives, snap-off knives, sheet rock knives, and box cart cutters.
- b. “Person” means any individual, corporation, partnership, association, organization, or other legal entity. “Person” does not mean an adult parent or guardian of a minor, who gives to, or provides such minor with, a “box cutter” for home improvement or other such work.
- c. “School premises” means the buildings, grounds, or facilities owned, occupied, or under the control or custody of public or private institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level or its equivalent. The term shall also include any vehicles used for the transportation of students or personnel of the institutions:
  - i. owned, operated, or leased by such educational institutions; or
  - ii. owned, operated, or leased by a person contracted to provide transportation of students for such educational institutions.

### Section 3. **Sale to minors.**

- a. It shall be unlawful for any person to sell, offer to sell, give and/or provide, or cause another person to sell, offer to sell, give, and/or provide a box cutter to any individual who has not yet attained eighteen (18) years of age.
- b. Nothing in this section shall preclude an employer from temporarily providing a minor employee with a box cutter, so long as the instrument is used during said minor’s course of employment, and such instrument is used only under the supervision of the employer, or said employer’s agent.

Section 4. **Open display.** Any person who sells or offers box cutters for sale, shall place such box cutters on display only if such items are: (a) contained within a sealed and locked case; (b) located behind the service counter with access limited to the seller or his or her agents or employees; or, (c) stored in any other manner which restricts access to box cutters by customers and/or the general public.

### Section 5. **Possession on school premises.**

- a. It shall be unlawful for any individual who has not yet attained twenty-one (21) years of age to possess a box cutter while on school premises.
- b. Nothing in this section shall preclude the temporary transfer to, and/or use by, an individual, who has not yet attained twenty-one (21) years of age, of a box cutter on school premises for a valid school-related purpose, where such instrument is used only under the supervision of a school staff person.
- c. Nothing in this section shall preclude the possession and/or use of a box cutter on school premises by an individual, who has not yet attained twenty-one (21) years of age, so long as such individual is performing work on such premises during the course of his or her employment, and such instrument is used only under the supervision of his or her employer, said employer’s agent, or a school staff person.

Section 6. **Penalties.** Any person who violates any provision of this title shall, for a first

offense, be guilty of a violation punishable by a fine of not more than two hundred fifty dollars. A second or subsequent offense shall be a Class B misdemeanor punishable by a fine of not more than five hundred dollars or three months imprisonment, or both.

**Section 7. Separability.** If any part or provision of this local law or the application thereof to any person, entity or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities, or circumstances.

(Added by Local Law No. 1-1997, in effect May 6, 1997.)

## TITLE 28

### SMOKING LAW

#### **I. Legislative intent.**

A. The Nassau County Legislature finds that significant health risks have been determined to be attributable to exposure to environmental tobacco smoke (“ETS”). According to the United States Environmental Protection Agency (EPA), environmental tobacco smoke is a known carcinogen, which belongs in the category of group A (known human) carcinogens, and is responsible for 3000 lung cancer deaths each year in non-smoking adults. The EPA also concludes that ETS causes other significant health problems in adults and that exposure to ETS can pose substantial health risks to children. The EPA has concluded that exposure to ETS increases the risks of respiratory and middle ear diseases in children, contributing to between 150,000 and 300,000 cases of bronchitis and pneumonia in infants and young children each year, significantly worsens the condition of 200,000 to 1,000,000 asthmatic children, and contributes to new cases of asthma in once-healthy children.

B. The Nassau County Legislature supports the national health objective to reduce the incidence of adult smoking from the current prevalence of approximately 25 percent, to a level of 15 percent by the year 2000.

C. The Nassau County Legislature further finds that any regulation of smoking invokes significant nonhealth related concerns based solely on economic and social considerations.

D. It is the intent and purpose of this Law to decrease residents’ exposure to environmental tobacco smoke by increasing restrictions on smoking in public places within the County of Nassau and limiting the access of minors to cigarettes and tobacco products while striking a balance among the imposition of regulatory burdens on business, the rights of smokers and the health needs of non-smoking individuals.

#### **II. Declaration of policy.**

A. It is declared to be the policy of the Nassau County Legislature to discourage smoking in Nassau County and protect non-smokers from the known harmful effects of second-hand smoke.

### III. Definitions.

A. A “bar” or “tavern” shall mean a business establishment that is devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the service of food is incidental to the business of the facility. Service of food shall be considered incidental if the food service generates less than twenty percent (20%) of total annual gross sales. Any bar that generates twenty percent (20%) or more of total annual gross sales from the sale of food for on-premises consumption shall be considered a restaurant.

(Amended by Local Law No. 15-2002, in effect November 6, 2002.)

B. An “exempt organization” includes any volunteer fire department, any lodge of Free and Accepted Masons; any lodge of the Knights of Pythias; any lodge of the Benevolent and Protective Order of Elks; any council of the Knights of Columbus; the Catholic Daughters of America; any commandery of the Knights of Malta; any chapter of the American Legion; any lodge of the Order Sons of Italy in America; the Ancient Order of Hibernians; any post of the Jewish War Veterans of the United States, Inc.; any post or counties council of the Veterans of Foreign Wars of the United States, Inc.; any chapter, county, committee or department organization of the Disabled American Veterans; any Kiwanis Club; any Rotary Club; any Lions Club or any other similar organization.

C. A “place of employment shall be considered to have an insignificant portion of its work force composed of people under the age of eighteen years” if two percent or less of its work force is under the age of eighteen years. Workforce shall include but not be limited to employees, independent contractors, volunteers, interns and other similar positions whether paid or unpaid.

D. “Private social functions” shall mean any wedding, parties, testimonial dinners, meetings or other similar gatherings in which the seating arrangements are under the control of the organizer or sponsor of the event and not the person who owns, manages, operates or otherwise controls the use of the location in which the function is held.

E. “Public means of mass transportation” shall mean public buses, trains, vans, taxicabs and limousines and ticketing or boarding areas.

F. A “Restaurant bar area” shall mean a contiguous area of a restaurant containing a counter in which the service and consumption of food in this area is incidental to the service and consumption of alcoholic beverages. Service of food shall be considered incidental if the food service generates less than 40% of the total annual gross sales.

G. “School grounds” shall mean any building, structure and surrounding outdoor grounds contained within a public or private pre-school’s, nursery school’s, elementary school’s, high school’s, vocational learning center’s, child care facility’s or children’s institution’s legally defined property boundaries as registered in the County Clerk’s Office or any vehicles being used in a school capacity to transport children or school personnel.

H. A “smoking room” shall mean a room provided to allow smoking. It must be located so that nonsmoking patrons would not be required to enter the room and it must be served by a properly operating and properly maintained filter system that recirculates clean air back into the building atmosphere or by a properly operating and properly maintained ventilation system exhausted to the outside of the building in such a way as to prevent the reintroduction of tainted air into the building atmosphere. The room must be provided with self closing floor to ceiling doors, which doors shall remain closed except to the extent necessary to permit ingress and egress to such room or the room must be negatively pressurized in such a way as to prevent the escape of smoke to the smoke free areas of the location. The smoking room shall not be the sole location of vending

machines, waiting areas or the area of payment for services. Minors under the age of eighteen (18) years shall not be permitted access to the smoking room unless accompanied by a parent or legal guardian. If a smoking room is provided, then the non-smoking area of a location containing a smoking room shall be sufficient to meet customer demand and a determination may not be made that no such demand exists. If 75% of the location's capacity is designated as a no smoking area, then customer demand will be deemed to have been met.

I. "Smoking" shall mean the burning or combustion of tobacco-containing products or the carrying of ignited tobacco-containing products.

J. "Sports arenas and recreational areas" shall mean any indoor or outdoor sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller or ice skating rinks or similar areas.

K. "Concourse area of a bowling center" is the area directly behind and immediately contiguous to the bowler settee area.

L. A "tobacco business" shall mean a sole proprietorship, corporation, partnership or other entity in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail and in which the sale, manufacture or promotion of other products generates less than 10 percent of total annual gross sales.

M. "Herbal cigarette" shall mean any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including, but not limited to, as a cigarette, cigar or pipe filler.

(Subdivision M added by Local Law No. 16-2000, in effect June 14, 2000.)

#### **IV. Regulation of smoking.**

A. Except as otherwise provided in this Law, smoking shall not be permitted and no person shall smoke in the following locations:

1. In or on any public means of mass transportation;
2. Health care facilities, medical diagnostic centers, and school grounds;
3. Public areas of indoor facilities and indoor areas used by the public including, but not limited to: arenas, banks, stores, offices, convention and trade centers, clubhouses, common areas of multiple dwellings, courthouses, galleries, hotel, motel and theater lobbies, any auditorium, elevator, public areas of food stores, jury rooms, lecture halls, libraries, movie houses, museums, public hearing rooms, conference rooms, meeting rooms, locations of public assembly, any area in which public business is conducted and which requires or allows direct participation or observation by the general public, public restrooms, public waiting rooms, retail or wholesale premises or malls, service areas, theaters and areas of any municipal buildings and zoos; except that

a) Smoking shall be permitted in a smoking room.

4. A restaurant with an indoor seating capacity of more than 50 patrons, including any seating in the restaurant bar area that is not used exclusively for seating at the bar; except that

- a) Smoking shall be permitted in a smoking room.
5. A restaurant with an indoor seating capacity of 50 patrons or less, including any seating in the restaurant bar area that is not used exclusively for seating at the bar; except that
- a) Smoking shall be permitted in designated areas for smoking not to exceed 25% of the seating capacity of such restaurant if such restaurant is served by a properly operating and properly maintained filter system that recirculates clean air back into the building atmosphere or by a properly operating and properly maintained ventilation system exhausted to the outside of the building in such a way as to prevent the reintroduction of tainted air into the building atmosphere.  
Effective March 1, 2003, smoking shall be prohibited in all restaurants, including all outdoor dining areas of restaurants.\*  
(Amended by Local Law No. 15-2002, in effect November 6, 2002.)
6. Restaurant bar area; except that
- a) If the perimeter of the restaurant bar area is located at least 6 feet from the perimeter of any indoor dining area of such restaurant, smoking shall be permitted in the restaurant bar area if such bar area is equipped with a properly operating and properly maintained filter system that recirculates clean air back into the building atmosphere or by a properly operating and properly maintained ventilation system exhausted to the outside of the building in such a way as to prevent the reintroduction of the tainted air into the building atmosphere.
  - b) If the perimeter of the restaurant bar area is located less than six (6) feet from the perimeter of any indoor dining area of such restaurant, smoking shall be permitted only in a smoking room located in such restaurant bar area.\*  
(Repealed by Local Law No. 15-2002, in effect November 6, 2002.)
7. Place of employment: except that
- a) Smoking shall be permitted in certain offices if the offices meet the criteria for smoking rooms and such offices are occupied solely by smokers;  
Effective March 1, 2003, smoking shall be prohibited in all enclosed facilities within a place of employment, except within a place of employment that derives at least 90% of its revenue from tobacco retail sales, and a private home which may serve as an office workplace.\*  
(Amended by Local Law No. 15-2002, in effect November 6, 2002.)
  - b) Smoking shall be permitted in a smoking room located in a cafeteria.

8. Bowling centers; except that
  - a) Smoking shall be permitted at all times in a smoking room;
  - b) Smoking shall be permitted after 6:00 P.M. in the concourse area of a bowling center if a nonsmoking area constituting at least twenty-five percent of the square footage of the concourse area is provided.\*  
(Repealed by Local Law No. 15-2002, in effect November 6, 2002.)
9. Seating sections and aisles of outdoor areas of public places providing seating and offering open-air motion picture presentations, open-air concert, stage, dance, lecture or recital presentations or other similar open-air presentations or performances; except that
  - a) Smoking shall be permitted in parking lots of such locations.
  - b) Smoking may be permitted in a non-seating section designated for smoking as long as this area is separated from the seating area and aisles and does not constitute the sole location of vending machines, waiting or service areas, rest rooms or areas of payment for services. There shall also be designated a separate non-smoking area sufficient to meet customer demand and a determination may not be made that no such demand exists. If 75% of the non-seating area in the facility open to the public is designated as a non-smoking area, then customer demand will be deemed to have been met.
10. Seating sections and aisles of outdoor areas of sports arenas and recreational areas; except that
  - a) Smoking shall be permitted in parking lots of such sports arenas and recreational areas.
  - b) Smoking may be permitted in a non-seating section designated for smoking as long as this area is separated from the seating area and aisles and does not constitute the sole location of vending machines, waiting or service areas, rest rooms or areas of payment for services. There shall also be designated a separate non-smoking area sufficient to meet customer demand and a determination may not be made that no such demand exists. If 75% of the non-seating area in the facility open to the public is designated as a non-smoking area, then customer demand will be deemed to have been met.
11. Outdoor dining area of restaurants; except that
  - a) Smoking shall be permitted in a single designated portion of an outdoor dining area which may include up to 25% of the outdoor dining area's seating capacity.
12. Added. Effective March 1, 2003, smoking shall be prohibited in all bars

and taverns.\*

(Added by Local Law No. 15-2002, in effect November 6, 2002.)

13. Added. Effective January 1, 2004, smoking shall be prohibited in bingo halls and all other public indoor places where bingo shall take place.\*

(Amended by Local Law No. 15-2002, in effect November 6, 2002.)

B. No area may be designated for smoking where prohibited by the Nassau County Fire Prevention Ordinance or by regulation of another agency having jurisdiction.

C. Smoking restrictions in this Law will not apply to those locations equipped with a properly operating and properly maintained filter system that recirculates clean air back into the building atmosphere or by a properly operating and properly maintained ventilation system exhausted to the outside of the building in such a way as to prevent the reintroduction of tainted air into the building atmosphere when private social functions are being held.

D. Smoking restrictions in this Law will not apply to bars or taverns if prominent notice is posted at the doors or entrances that smoking is permitted throughout the facility.

E. Smoking restrictions in this Law will not apply to tobacco businesses.

F. Smoking restrictions in this Law will not apply to any location owned or operated by an exempt organization when such location is being used by an exempt organization.

#### **V. Tobacco Distribution to Minors.**

A. No person, firm, partnership, company, corporation or facility whose business includes the sale or distribution of tobacco products or herbal cigarettes shall sell, vend, distribute or otherwise supply or allow the distribution for remuneration or free of charge of any cigarette or tobacco product or herbal cigarettes to any person under the age of 18 years. The possession of a driver's license or other photographic identification card issued by a government agency or educational institution indicating that an individual is at least 18 years of age shall be required as proof of age from any person who reasonably appears to be under the age of 27 and requests the purchase of cigarettes or other tobacco products or herbal cigarettes.

B. Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale shall post in a conspicuous place the following statement:

"SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OTHER TOBACCO PRODUCTS OR HERBAL PRODUCTS THAT ARE SMOKED IN A MANNER SIMILAR OR IDENTICAL TO TOBACCO PRODUCTS TO A PERSON UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW."

(Subdivision V amended by Local Law No. 16-2000, in effect June 14, 2000.)

#### **VI. Vending Machines.**

A. No person, firm, partnership, company, corporation or facility shall operate a vending machine that dispenses tobacco products or herbal cigarettes, unless such machine is located:

1. In a bar, tavern, or Restaurant Bar Area with a valid, on premises, full liquor license.
2. In a private club.



3. In a tobacco business.
4. In a place of employment that has an insignificant portion of its regular work force composed of people under the age of eighteen years and only in such locations that are not accessible to the general public, or
5. In a smoking room.

B. Wherever tobacco product vending machines or vending machines that dispense herbal cigarettes are provided, they must be under the direct and full time visual supervision of the person in charge of the location or his or her designated agent or employee.

(Subdivision VI amended by Local Law No. 16-2000, in effect June 14, 2000.)

## **VII. Posting of Signs.**

A. SMOKING IS PROHIBITED or NO SMOKING signs, using the international NO SMOKING symbol - (i.e., a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be prominently and conspicuously posted in every location where smoking is prohibited by this Law or prohibited by the owner, operator or manager of such location. These signs shall be posted by the owner, by the operator, manager or other person having control of such place. SMOKING IS PERMITTED signs, (i.e., pictorial representation of a burning cigarette enclosed in a green circle with no bar) shall be posted where the conditions established in this Law allowing smoking have been met. Such signs shall be prominently and conspicuously posted at doors and entranceways to all areas in locations where smoking is permitted. Signs shall be protected from tampering, damage, removal or concealment and shall be at least 10 inches by 14 inches in size.

B. In Movie Houses, the message "SMOKING IS PROHIBITED" or equivalent thereof shall be shown on the screen for a period of not less than 5 seconds, in conjunction with each showing of the feature presentation.

## **VIII. Additional Responsibilities of Management.**

A. The person in charge of any location where smoking is regulated by this Law shall also be responsible to:

1. Provide ashtrays and smoking receptacles where smoking is permitted by this Law and maintain locations where smoking is prohibited free of ashtrays or smoking receptacles.
2. Enforce this Law by requesting compliance from patrons verbally or by presenting a Commissioner's Message Card as promulgated by the Nassau County Department of Health and by prohibiting employees from smoking, except in accordance with this law.

## **IX. Inspection and Enforcement.**

A. The Nassau County Department of Health shall enforce this Law.

B. The Nassau County Health Commissioner or the Commissioner's designees shall be authorized to serve official notices of violation of this Law.

C. A waiver suspending enforcement of this Law through December 31, 1998 shall be

automatically granted to any individual or business seeking to construct a smoking room in accordance with this Law. Application for such a waiver shall be made, in writing by certified mail to the Commissioner of the Nassau County Department of Health, 240 Old Country Road, Mineola, New York, 11501, prior to July 1, 1998.

#### **X. Violations.**

A. Any violation of or noncompliance with any provision of this Law shall be punishable by a fine not exceeding one thousand two hundred and fifty (\$1250.00) dollars. Each day or part of day on which a violation continues shall constitute a separate violation.

(Amended by Local Law No. 16-2000, in effect June 14, 2000.)

#### **XI. Waivers.**

A. The Commissioner of Health, or a person specifically designated by the Commissioner, shall have the authority to grant a waiver from a specific provision of this Law, in a particular case, subject to appropriate conditions, taking into account public welfare and necessity, where the issuance of such waiver will not harm the health, safety and general welfare of the people of the County. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose of this law. For example, a waiver may be granted allowing smoking in a portion of a public area where smoking is otherwise prohibited by this Law if ventilation and/or air filtration equipment is provided which effectively eliminates the hazards of environmental tobacco smoke to an extent acceptable to the Commissioner of Health. Waivers shall be valid for not more than 24 months but can be re-issued by the Department at the Department's discretion. The Commissioner or the Commissioner's designees may revoke a waiver at any time in the interest of protecting public health.

#### **XII. No Private Cause of Action.**

A. Nothing in this law shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any theory of liability upon which any person may be held liable to any other person for exposure to smoke.

B. An employer, administrator, manager, owner or operator of any location regulated by this law who fails to comply with the provisions of this law shall not be subject to any legal liability or action solely as a result of such compliance or non compliance except as provided in this law.

#### **XIII. General Provisions.**

A. Nothing in this law shall be construed to deny the owner, operator or manager of a location covered by this law the right to designate the entire location, or part thereof, as a non-smoking area.

B. Notwithstanding anything contained herein, smoking may not be permitted where prohibited by any other law, rule, or regulation of any Federal Agency, any State agency or any political subdivision of the Federal or State government.

Section 2. **Severability.** If any clause, sentence, paragraph, section, part or provision of this Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment/decreed/order shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, part or provision thereof directly involved in the controversy in which the judgment/decreed/order shall have been rendered.

Section 4. Added. **Enforcement.** The Nassau County Health Department shall be responsible for the enforcement of this local law.\*  
(Added by Local Law No. 15-2002, in effect November 6, 2002.)

(Title 28 added by Local Law No. 7-1997, became a law January 8, 1998, in effect July 1, 1998.)

\*(Editor's note- Marked sections were amended, repealed, or added by Local Law No. 15-2002, in effect November 6, 2002. However, the intent of the local law and the nature of its modifications are unclear. See Pankos Diner Corp. v. Nassau County, No. 03-CV-1203 (DRW)(WDW), U.S. Dist. Ct., E.D. N.Y. (Slip Op., June 3, 2003). The full text of section 2 of L.L. 15-2002, which contains these modifications to Title 28, appears below:

“Section 2. Amendments.

#### TITLE 28 SMOKING LAW

##### III Definitions.

A. A "bar" or "tavern" shall mean a business establishment that is devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the service of food is only incidental to the business of the facility. Service of food shall be considered incidental if the food service generates less than twenty percent (20%) of total annual gross sales. Any bar that generates twenty percent (20%) or more of total annual gross sales from the sale of food for on-premises consumption shall be considered a restaurant.

##### IV Regulation of Smoking.

(A)(5)(a). Effective March 1, 2003, smoking shall be prohibited in all restaurants, including all outdoor dining areas of restaurants.

(A)(6)(b). Deleted.

(A)(7)(a). Effective March 1, 2003, smoking shall be prohibited in all enclosed facilities within a place of employment, except within a place of employment that derives at least 90% of its revenue from tobacco retail sales, and a private home which may serve as an office workplace.

(A)(8)(b). Deleted.

(A)(12) Added. Effective March 1, 2003, smoking shall be prohibited in all bars and taverns.

(A)(13) Added. Effective January 1, 2004, smoking shall be prohibited in bingo halls and all other public indoor places where bingo shall take place.

Section 4. Added. Enforcement. The Nassau County Health Department shall be responsible for the enforcement of this local law.”)

#### TITLE 29

#### REAL PROPERTY TAX EXEMPTION FOR SENIORS AND VETERANS IN COOPERATIVE HOUSING

- |         |    |   |
|---------|----|---|
| Section | 1. | Legislative Intent.   |
|         | 2. | Real Property Tax Exemption for Tenant-Stockholders sixty-five years and older in cooperative apartment corporations. |
|         | 3. | Veteran's Real Property Exemption for Tenant-Stockholders in  |

## Cooperative Apartments.

Section 1. **Legislative Intent.** Chapter 406 of the Laws of 1995 enables a municipality to extend the senior citizen's real property tax exemption to seniors who reside as tenant-stockholder's in property owned by a cooperative apartment corporation. A new subdivision 3-a was added to §467 of the Real Property Tax Law qualifying such tenant-stockholders to apply for a senior citizen's real property tax exemption. Chapter 171 of the Laws of 1997 enables a municipality to extend the Veteran's real property tax exemption to veterans who reside as tenant-stockholders in housing owned by cooperative apartment corporations. §458 and §458-a of the Real Property Tax Law of the State of New York have been amended to include cooperative apartments. These laws provide that the qualifying tenant-stockholder be credited by the cooperative apartment corporation with the appropriate reduction in real property taxes, otherwise chargeable to the tenantstockholder. In order for these benefits to be extended to senior and/or veteran tenant-stockholders, the State law requires that local legislation be adopted to include these provisions.

Section 2. **Real Property Tax Exemption for Tenant-Stockholders sixty-five years of age or older in cooperative apartment corporations.** The senior citizens tax exemption as set forth in §6-2.2 of the Nassau County Administrative Code and §467 of the Real Property Tax Law of the State of New York shall be extended to tenant-stockholders residing in property owned by cooperative apartment corporations.

Section 3. **Veteran's Real Property Exemption for Tenant-Stockholders in Cooperative Housing.** The Veteran's real property tax exemption is hereby extended to tenant-stockholders living in cooperative housing within the County of Nassau. The provisions of §458 and §458-a of the Real Property Tax Law of the State of New York shall apply. Veterans residing in a dwelling subject to the provisions of either article two, four, five or eleven of the Private Housing Finance Law are not eligible for this exemption.  
(Added by Local Law No. 5-1997, in effect November 5, 1997.)

## TITLE 30

### EXTENSION OF TIME PERIOD FOR FILING APPLICATIONS FOR THE SCHOOL TAX RELIEF (STAR) EXEMPTION WITH RESPECT TO THE 1998-99 SCHOOL TAXES

Section	1.	Legislative Intent
	2.	Extended Filing Date for STAR Applications
	3.	Review of STAR Applications
	4.	Review of Complaints for Denials of STAR Applications
	5.	Entering STAR Exemptions on the Final Roll
	6.	Eligibility Date for STAR Exemption
	7.	Severability

Section 1. **Legislative Intent.** Chapter 6 of the Laws of 1998 enables the County of Nassau to extend the time for the filing of School Tax Relief (STAR) exemption applications. The Legislature of the County of Nassau desires to extend the benefits of any available tax relief programs to its seniors. As the STAR program was a new state program initiated by Governor Pataki, there may be some seniors who were unable to file or unaware of the need to file

applications. This legislation will assist those seniors by giving them an additional time period to qualify for school tax relief.

Section 2. **Extended Filing date for STAR Applications.** The Board of Assessors, shall accept applications for the School Tax Relief (STAR) exemption for 1998-99 school taxes until March 2, 1998.

Section 3. **Review of STAR Applications.** The Board of Assessors shall act on all STAR Applications no later than March 13, 1998.

Section 4. **Review of Complaints for Denial of STAR Applications.** For purposes of review of all complaints for denial of STAR applications timely filed pursuant to this law the Board of Assessment Review shall meet on April 13, 1998. The Board of Assessment Review shall notify the Board of Assessors of their determination. For purposes of this section, all denials of STAR applications shall be reviewed by the Board of Assessment Review.

Section 5. **Entering STAR Exemptions on the Final Roll.** Any duly granted STAR exemptions not already entered on the final 1998 assessment roll shall be entered on the 1998 assessment roll no later than May 1, 1998.

Section 6. **Eligibility Date for STAR Exemption.** Eligibility for the STAR exemption on the final assessment roll shall be based on the condition and ownership of the property as of January 2, 1998.

Section 7. **Severability.** If any part or provision of this local law or the application thereof to any person, entity, or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities or circumstances.

(Added by Local Law No. 1-1998, in effect January 15, 1998.)

## \*TITLE 30

### LINKED DEPOSIT PROGRAM

\*(Added by Local Law No. 3-1998, in effect April 14, 1998. Probably should read Title 31.)

Section	1.	Legislative Intent
	2.	Definitions
	3.	Establishment and purpose, linked deposit program authorization
	4.	Responsibilities of Commissioner of Commerce and Industry; County Treasurer
	5.	Term of program
	6.	Linked loans
	7.	Interest rate for linked loan
	8.	Application procedure
	9.	Renewal of linked deposit

10. Liability; early repayment and withdrawal
11. Monitoring and annual report
12. Promotion of program
13. Expiration
14. Severability

Section 1. **Legislative Intent.** The County Legislature hereby finds that the economy of Long island is undergoing fundamental change. International competition has dramatically intensified with the adoption, on a global scale, of advanced technologies and modern production methods and is eroding the competitive position of Long island manufacturers and other businesses in the global economy and threatening their profitability, employment and future prospects. The end of the cold war and the consequent reduction in the nation's defense spending has made it imperative that defense industry manufacturers restructure themselves by changing or diversifying production to take advantage of commercial markets.

This County Legislature further finds that a vibrant high technology manufacturing sector is essential to sustain economic growth, and to continue the region's economic health and its ability to generate permanent private sector jobs. Improving industrial productivity, promoting quality products and services, encouraging high performance work organizations, facilitating defense industry conversion, enhancing the County's overall ability to compete in the production of manufactured goods and increasing international exports of Nassau County products and services are essential goals of the region's economic development policy. These goals require joint public and private cooperation to encourage improvements in manufacturing, exporting capability, and market access by individual manufacturers and other businesses. The County Legislature further finds that financial incentives are needed to help reduce the risks to manufacturers and other businesses inherent in undertaking new investments in modernization, productivity and quality improvements, conversion from defense to commercial production, accessing new markets, and export trade. The cost of financing, combined with the current shortage of bank credit for business, frequently discourages many manufacturers and other businesses, especially small and medium sized firms, from undertaking such projects.

Accordingly, the County Legislature hereby finds that the competitiveness of Long island's job intensive manufacturing economy and the health of the region's export trade will be enhanced and the public interest served by creating a linked deposit program, administered by the Department of Commerce and Industry, in which the County Treasurer is authorized to deposit County funds with participating banks at a reduced rate of return when such banks make lower cost loans, on the basis of such linked deposits, to qualifying businesses to improve productivity, competitiveness, access to new markets, and exporting capabilities.

Section 2. **Definitions.** As used in this title, the following terms shall have the following meanings:

- a. "Eligible business" means a business located in Nassau County which meets the following criteria:
  - (1) which employs 100 or fewer employees within the County on a full-time basis;
  - (2) meets the definition of a manufacturing firm as set forth in section 2(g) hereof;
  - (3) is seeking financing through the program for an export project;
  - (4) is a technical service-based firm, or

- (5) whose proposed project has a positive economic impact on the local economy as determined by the advisory committee.

“Eligible business” shall not mean retail businesses or any business that delivers a service rendered at a facility personally by an individual for an individual, directly, without the intervention of a third party, or a professional service business such as health, legal, accounting, engineering, or architectural services.

b. “Eligible projects” means:

- (1) export projects designed to increase a firm’s export activities; or
- (2) for manufacturing and service firms, projects which involve the preparation of strategic plans for improving productivity and competitiveness; the introduction of modern equipment and/or an expansion of facilities as part of a modernization plan; the introduction of advanced technologies to improve productivity and quality; improvements in production processes and operations; introduction of computerized information, reporting and control systems; reorganization or improvement of work place systems and the introduction of total quality and employee participation programs; development and introduction of new products; identification and development of new markets, including entry into foreign markets; financial restructuring for purposes of enabling modernization activities; buyouts of viable companies by employees or local owners residing in Suffolk or Nassau County; and the provision of working capital for other modernization activities that will improve the competitiveness and productivity of a firm and result in the creation or retention of jobs.

c. “Lender” means any bank or trust company as defined in Sections 10 and 11 of the General Municipal Law which is or shall become an approved depository of County funds and which agrees to participate in the program.

d. “Linked deposit” means a deposit placed with a lender by the County Treasurer for a period of two years at the linked deposit interest rate, provided the lender agrees to:

- (1) lend the equivalent value of such deposit to an eligible business at the linked deposit interest rate provided in Section (2)(e) hereof, and
- (2) permit the deposit to be comprised of a series of ninety day deposits each bearing an interest rate equal to the linked deposit interest rate fixed at the time the original deposit is placed.

e. “Linked deposit interest rate” means for a linked deposit made in connection with any linked loan, a fixed rate of interest which is two hundred basis points below the lender’s posted two year certificate of deposit rate, or if the lender does not offer a two year certificate of deposit, is two hundred basis points below the average statewide rate for two year certificates of deposit as determined by the County Treasurer.

f. “Linked loan” means a loan for purposes of an eligible project, in an amount equal to a linked deposit and bearing interest as set forth in Section 7 hereof.

g. “Manufacturing firm” means a firm involved with extracting, smelting, recovering, developing, preparing, compounding, converting, assembling or producing in any manner, minerals, raw materials, products or substances of any kind or nature, and shall include

facilities related thereto for storage, warehousing or distribution, for research and development or for the discovery of new, and the refinement of known, substances, processes, and products.

h. "Program" means the Nassau County Linked Deposit Program.

**Section 3. Establishment and purpose, linked deposit program authorization.** The Nassau County Linked Deposit Program is hereby created. The purpose of the program is to encourage and assist eligible businesses within the County to undertake eligible projects that will materially contribute to improving their performance and competitiveness. The County Treasurer is hereby authorized to use any monies of the County that the County Treasurer is authorized to invest, as linked deposits for the program, except as is otherwise prohibited by law. Not more than two million dollars of such moneys shall be on deposit pursuant to the program at any given time.

**Section 4. Responsibilities of Commissioner of Commerce and Industry; County Treasurer.**

a. The Commissioner of Commerce and Industry shall administer the program created by this title and market and promote the program. The Commissioner, pursuant to a vote by a majority of the linked deposit advisory committee, shall make all determinations with respect to the application, use and implementation of the program for eligible projects. The advisory committee shall consist of the following members:

The Commissioner of Commerce and Industry as chair

The County Treasurer or his/her representative

The County Comptroller or his/her representative

A representative of the County Executive

Three (3) representatives of the County Legislature as selected by the Presiding Officer

One (1) representative of the County Legislature as selected by the Minority Leader

A representative of the Long Island Association, or any successor organization

b. The County Treasurer is authorized to invest County funds, in the manner authorized by and pursuant to the provisions of Sections 10 and 11 of the General Municipal Law, the County's investment policy, and otherwise in accordance with the provisions of the laws of the County and the State of New York, with lenders in linked deposits.

**Section 5. Term of program.** The program shall exist for a term which expires on the date this title expires. Linked loans may be made only during the term of the program and linked deposits shall mature no later than two years after the expiration of the term of the program.

**Section 6. Linked loans.** Linked loans shall be made by lenders pursuant to the program only to eligible businesses in connection with eligible projects. Linked loans shall be limited to a maximum amount of five hundred thousand dollars. The credit decision for making a linked loan shall be made solely by the lender. Notwithstanding the length of the term of a linked loan, the linked deposit relating to the linked loan shall be for a period of not more than two years, except as provided in Section 9 of this title. In the event that the lender and the borrower agree to a term for longer than two years for the loan, the interest rate charged for the period of the loan beyond the initial two-year period shall be agreed to by the lender and the borrower without restriction by



this title. No eligible business may receive more than one linked loan during the term of the program.

**Section 7. Interest rate for linked loan.** Lenders who make loans pursuant to the program shall not be entitled to charge any discount, points, origination fees, handling fees, service charges, refinancing fees or penalties or any charge other than those normally charged and in such amounts normally charged by the lender for loans of the type being made without regard to the program. The interest rate charged shall be two hundred basis points below the interest rate charged to a similarly situated business outside of the program. The lender shall certify to the Commissioner of Commerce and Industry that its interest rate meets the criteria set forth in this program.

**Section 8. Application procedure.**

a. The Commissioner of Commerce and Industry, pursuant to a vote by a majority of the linked deposit advisory committee, shall establish procedures and other requirements for participation in the program, and shall provide a simplified application form to the participating lenders for linked deposits. Such form shall reflect the qualifying information required by this title for eligible businesses and shall contain a statement by the applicant that inability to obtain the reduced interest rate provided by the program would impede the ability of the applicant to undertake the eligible project. Upon completion of an application for a linked deposit, the lender shall send the application, together with the interest rate certification required, to the Commissioner of Commerce and Industry who shall, pursuant to a vote by a majority of the linked deposit advisory committee, either approve or reject the application within twenty-eight days. The Commissioner of Commerce and Industry and the advisory committee shall evaluate each application based upon the following criteria:

- (1) the significance of the eligible project for improving the competitive position and profitability of the eligible business;
- (2) the materiality of a reduced cost of borrowing through the linked loan to the ability of the eligible business to undertake the eligible project;
- (3) the number of jobs likely to be created or retained, or other substantial economic benefits likely to be achieved as a result of the linked loan; and
- (4) such other criteria as the Commissioner of Commerce and Industry, pursuant to a vote by a majority of the linked deposit advisory committee, determines relevant.

b. If the linked deposit application is approved by the Commissioner of Commerce and Industry, pursuant to a vote by a majority of the linked deposit advisory committee, the Commissioner shall notify the County Treasurer that the Commissioner, pursuant to a vote by a majority of the linked deposit advisory committee, has determined that the application satisfies the requirements of this title, and the Commissioner shall request that the County Treasurer deposit funds with the lender, to the extent available, in accordance with Sections 10 and 11 of the General Municipal Law and the County's investment policy. Such deposits shall be secured in accordance with the provisions of Sections 10 and 11 of the General Municipal Law, and lenders receiving such deposits shall satisfy, in the sole judgment of the County Treasurer, all collateral and other requirements generally applied by the County Treasurer to funds invested by such office. The County Treasurer

and the lender shall enter into a written deposit agreement in accordance with the County's investment policy. In no event shall any defect in any such agreement be asserted as a defense by a borrower on a linked loan made pursuant to the program. If in the objective opinion of the County Treasurer the financial position of the County would be adversely affected by the making of a linked deposit, the County Treasurer will be under no obligation to do so. The failure to make a linked deposit shall not give rise to a private cause of action.

**Section 9. Renewal of linked deposit.** A lender may, on behalf of a borrower, apply to the Commissioner of Commerce and Industry to request renewal of the linked deposit for an additional two-year period to coincide with a second two-year period of a borrower's linked loan. The Commissioner may grant such application if the Commissioner, pursuant to a majority vote of the linked deposit advisory committee, determines that the borrower, during the second two-year period of the linked loan, will create additional industrial modernization benefits or create additional export trade benefits or create additional jobs. If the Commissioner of Commerce and Industry, pursuant to a vote by a majority of the linked deposit advisory committee, grants such application, the Commissioner shall notify the County Treasurer that the Commissioner, pursuant to a vote by a majority of the linked deposit advisory committee, has determined that the application satisfies the requirements of this title and shall request the County Treasurer to continue the linked deposit with the lender for an additional two-year period in accordance with the provisions of Sections 10 and 11 of the General Municipal Law and the County's investment policy. Such linked deposit shall continue to be secured in accordance with Sections 10 and 11 of the General Municipal Law and the County's investment policy. The fixed interest rate on the continued linked deposit shall be the linked deposit interest rate in effect on the first day of the continuation of the linked deposit or such other rate agreed to by the County Treasurer and the lender. The County Treasurer and the lender shall enter into a written deposit agreement governing the continuation of the linked deposit in accordance with the County's investment policy. If in the objective opinion of the County Treasurer the financial position of the County would be adversely affected by the renewal of a linked deposit, the County Treasurer will be under no obligation to do so. The failure to renew a linked deposit shall not give rise to a private cause of action.

**Section 10. Liability; early repayment and withdrawal.** Nothing contained in this title shall impose liability on the County or any of its departments or employees for payment or delays in payments of the principal of or interest on a linked loan. Any delay in payments or any default on a linked loan shall in no way affect the linked deposit agreement between the lender and the County Treasurer. However, in the event the interest rate of the linked loan shall be increased as a consequence of default or renegotiation, or the loan shall be charged off, the lender shall give the County Treasurer prompt notice of such event, and the County Treasurer shall thereafter withdraw the linked deposit upon not less than seven day's prior written notice to the lender. Upon early repayment of a linked loan, the lender shall within thirty days give the County Treasurer notice of such early repayment and the County Treasurer shall thereafter withdraw the linked deposit upon not less than seven days' prior written notice to the lender, and the interest rate payable on the linked deposit from the date of early repayment of the linked loan to the date of withdrawal of the linked deposit shall be the interest rate upon which the linked deposit interest rate was calculated without regard to the two hundred basis point reduction.

**Section 11. Monitoring and annual report.**

a. The Commissioner of Commerce and Industry shall monitor the activities of participating lenders and businesses and may require periodic reports or other information as the Commissioner of Commerce and Industry, deems necessary from participating lenders and businesses on the status of the linked loans and the projects to ensure compliance with the provisions and the intent of this title.

b. On or before February first nineteen hundred ninety-nine, the Commissioner of Commerce and Industry shall submit to the County Executive and the County Legislature a report regarding the activities of the program. Such report shall contain a statement of the cost of the program to the County because of reduced rates on funds invested in linked deposits. Such report shall also include, but shall not be limited to, the number and type of linked loans under the program and the amount thereof, the number and types of lenders making linked loans and of firms receiving linked loans; the geographic distribution of such lenders and firms, the approximate number of jobs created or retained as the Commissioner determines useful in evaluating the economic benefits of the program.

Section 12. **Promotion of program.** The Department of Commerce and Industry shall actively market and promote awareness of the program in all geographical areas of the County among banks, banking organizations, manufacturing firms, manufacturing organizations, and regional and local economic development agencies.

Section 13. **Expiration.** This title shall expire five years from its effective date.

Section 14. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this title or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be ordered or adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this title, or in its application to the person, individual, corporation, firm, partnership, entity or circumstance, directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 3-1998, in effect April 14, 1998. Probably should read Title 31.)

## TITLE 32

### EXTENSION OF TIME PERIOD FOR FILING APPLICATIONS FOR THE SCHOOL TAX RELIEF (STAR) EXEMPTION WITH RESPECT TO THE 1999-2000 SCHOOL TAXES

Section	1.	Legislative Intent
	2.	Extended Filing Date for STAR Applications
	3.	Review of STAR Applications
	4.	Review of Complaints for Denials of STAR Applications
	5.	Entering STAR Exemptions on the Final Roll
	6.	Eligibility Date for STAR Exemption
	7.	Severability

#### Section 1. **Legislative Intent.**

a) Chapter 627 of the Laws of 1998 enables the County of Nassau to extend the time

for the filing of School Tax Relief (STAR) exemption applications. The Legislature of the County of Nassau desires to extend the filing time for filing tax STAR exemption applications so that more residents of Nassau County can avail themselves of the benefits of available tax relief programs. This legislation will assist residents of Nassau County by giving them an additional time period to qualify for school tax relief.

**Section 2. Extended Filing date for STAR Applications.**

- a) The Board of Assessors, shall accept applications for the School Tax Relief (STAR) exemption for 1999-2000 school taxes until March 1, 1999.

**Section 3. Review of STAR Applications.**

- a) The Board of Assessors shall act on all STAR Applications no later than March 12, 1999.

**Section 4. Review of Complaints for Denial of STAR Applications.**

- a) For purposes of review of all complaints for denial of STAR applications timely filed pursuant to this law the Board of Assessment Review shall meet on April 13, 1999. The Board of Assessment Review shall notify the Board of Assessors of their determination. For purposes of this section, all denials of STAR applications shall be reviewed by the Board of Assessment Review.

**Section 5. Entering STAR Exemptions on the Final Roll.**

- a) Any duly granted STAR exemptions not already entered on the final 1999 assessment roll shall be entered on the 1999 assessment roll no later than May 1, 1999.

**Section 6. Eligibility Date for STAR Exemption.**

- a) Eligibility for the STAR exemption on the final assessment roll shall be based on the condition and ownership of the property as of January 2, 1999.

**Section 7. Severability.**

- a) If any part or provision of this local law or the application thereof to any person, entity, or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities or circumstances.

(Added by Local Law No. 9-1998, in effect December 21, 1998.)

## TITLE 33

### LOCAL DEVELOPMENT CORPORATION

Section	1.	Legislature Intent
	2.	Local Development Corporation
	3.	Directors
	4.	Limitation on Purpose

Section 1. **Legislative Intent.** The Legislature hereby finds that:

A. The County of Nassau is expected to become entitled to receive payments under the Master Settlement Agreement (hereinafter, the "MSA") and the Consent Decree and Final Judgment of the Supreme Court of the State of New York, County of New York, dated December 23, 1998 (hereinafter, as the same may be amended or modified, the "Decree") in the class action entitled State of New York et al. v. Philip Morris Incorporation et. al. (Index No. 400361/97); and

B. In order to secure to present generations a portion of the benefits intended to be conferred by the MSA and the Decree it is necessary or desirable for the County to sell or transfer its rights, title and interest in and to all or a portion of the moneys to become payable to the County under the MSA and the Decree (hereinafter, the "Tobacco Settlement Revenues") to a local development corporation to be created by the County pursuant to the Not-For-Profit Corporation Law of the State of New York.

Section 2. **Local Development Corporation.** The County Executive and/or his designee(s) are hereby authorized to take all actions necessary to create a corporation pursuant to the New York Not-For-Profit Corporation Law §4411 (hereinafter, the "Corporation" ). The Corporation shall be granted all powers as may be deemed necessary by the County Executive and his designee(s), which powers shall include, but not be limited to, the power to acquire from the County its right, title and interest in and to all or a portion of the Tobacco Settlement Revenues, to issue bonds, notes and other evidence of indebtedness and to incur other obligations, to create and transfer assets of the Corporation to a business trust or other entity, and to take all other actions as may be necessary, convenient or desirable in furtherance of its corporate purposes and powers.

Section 3. **Directors.** The Corporation shall have three directors. One director shall be appointed by the majority vote of the County Legislature who shall serve for a term of three (3) years. One director shall be appointed by the County Executive, and shall be the County Treasurer, ex officio, who shall serve for a term of three (3) years. The third director shall be appointed jointly by the other two directors, and shall not be an officer, employee or agent of the County, who shall serve for a term of three (3) years. No director shall be removed except for cause.

(Amended by Local Law No. 5-2000, in effect January 13, 2000.)

Section 4. **Limitation on Purpose.** It is the specific intention of the Legislature that the purpose and scope of the Corporation be limited to the transactions contemplated by this local law including the purchase of Tobacco Settlement Revenues from the County, the securitization thereof and relation transactions.

## TITLE 34

Section	1.	Repealed
	2.	Repealed
	3.	Repealed
	4.	Repealed
	5.	Repealed
	6.	Repealed
	7.	Repealed
	8.	Repealed
	9.	Repealed
	10.	Repealed
	11.	Repealed
	12.	Repealed
	13.	Repealed
	14.	Repealed
	15.	Repealed
	16.	Repealed

Section 1. **Definitions.** Repealed.

Section 2. **Imposition of Tax.** Repealed.

Section 3. **Payment of Tax.** Repealed.

Section 4. **Liability for Tax.** Repealed.

Section 5. **Exemptions.** Repealed.

Section 6. **Credit.** Repealed.

Section 7. **Cooperative housing corporation transfers.** Repealed.

Section 8. **Designation of Agents.** Repealed.

Section 9. **Liability of Recording Officer.** Repealed.

Section 10. **Refunds.** Repealed.

Section 11. **Deposit and disposition of revenue.** Repealed.

Section 12. **Judicial Review.** Repealed.

Section 13. **Apportionment.** Repealed.

Section 14. **Miscellaneous.** Repealed.

Section 15. **Returns to be secret.** Repealed.

Section 16. **Severability.** Repealed

(Added by Local Law No. 6-1999, in effect August 10, 1999; amended to repeal all sections by Local Law No. 19-1999.)

## TITLE 35

### SALE OF TOBACCO LITIGATION SETTLEMENT PAYMENTS

- |         |   |
|---------|---|
| Section | 1. Legislative Intent   |
|         | 2. Pledge and Agreement   |
|         | 3. Authorization to take all actions necessary to effect a sale or transfer and to benefit from the consideration to be received from such sale or transfer |

Section 1. **Legislative Intent.** The Legislature hereby finds that:

A. The County of Nassau is expected to become entitled to receive payments under the Master Settlement Agreement (hereinafter, the "MSA") and the Consent Decree and Final Judgment of the Supreme Court of the State of New York, County of New York, dated December 23, 1998 (hereinafter, as the same may be amended or modified, the "Decree") in the class action entitled State of New York et al. v. Philip Morris Incorporated. et. al. (Index No. 400361/97); and

B. In order to secure to present generations a portion of the benefits intended to be conferred by the MSA and the Decree it is necessary or desirable for the County to sell or transfer its rights, title and interest in and to all or a portion of the moneys to become payable to the County under the MSA and the Decree (hereinafter, the "Tobacco Settlement Revenues").

Section 2. **Authorization to take all actions necessary to effect a sale or transfer and to benefit from the consideration to be received from such sale or transfer.** The County is hereby authorized in one or more transactions to sell or transfer, and to take any and all actions necessary or desirable to effect a sale or transfer of, the County's rights, title and interest in and to all or a portion of the Tobacco Settlement Revenues and to take any and all actions necessary or desirable to enable the County to benefit from the consideration to be received from any such sales or transfers. The Legislature may, by ordinance or resolution, approve the terms and conditions of any such transaction and the form and substance of any agreement of sales or transfer or other document necessary or desirable to effect any such transaction and may delegate to the County Executive or his designee(s) the power to execute and deliver any such agreement or other document as may be approved by the person executing the same and to take any and all other actions necessary or desirable to enter into, facilitate or consummate such transaction.

Section 3. **Pledge and Agreement.** The County is hereby authorized to pledge to and agree with each person (hereinafter, a "Purchaser") agreeing to acquire Tobacco Settlement Revenues in a transaction contemplated by this Title and the holders of any bonds, notes and other obligations (hereinafter the "Bonds") of any Purchaser that the County will not limit or alter the

rights of such Purchaser to fulfill the terms of its agreements with the holders of the Bonds or in any way impair the rights and remedies of such holders or the security for the Bonds until the Bonds, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. The Legislature, by ordinance or resolution, may make such a pledge to and agreement with a Purchaser and the holders of its Bonds and may, by ordinance or resolution, delegate to the County Executive or his designee(s) the power to make such a pledge to and agreement with a Purchaser and the holders of its Bonds and to take any and all actions necessary or desirable to cause such pledge to and agreement with a Purchaser and the holders of its Bonds to be made or enforced. Each Purchaser is hereby authorized to include in any agreement with or for the benefit of the holders of its Bonds any pledge or agreement made by the County pursuant to this section.

(Added by Local Law No. 13-1999, in effect August 10, 1999.)

## TITLE 36

### PRESCRIPTION OF CERTAIN HEALTH RELATED FACILITIES AND HOSPITAL FACILITIES FOR THE PREVENTION, DIAGNOSIS OR TREATMENT OF HUMAN DISEASE, PAIN, INJURY, DISABILITY, DEFORMITY OR PHYSICAL CONDITION AND CERTAIN FACILITIES INCIDENTAL OR APPURTENANT THERETO AND AUTHORIZATION OF REGULATORY AGREEMENT BETWEEN THE COUNTY OF NASSAU AND THE NASSAU HEALTH CARE CORPORATION

Section	1.	Findings
	2.	Prescription of Facilities
	3.	Regulatory Agreement
	4.	Severability

Section 1. **Findings.** The County Legislature of the County of Nassau (the "County") hereby finds and declares that the transfer to the Nassau Health Care Corporation (the "Corporation"), of certain healthcare facilities and operations of the County (the "Healthcare Assets") by agreement between the County and the Corporation the "Acquisition Agreement"), is essential to the provision of healthcare services and health facilities for the benefit of the residents of the State of New York and the County, including to persons in need of healthcare services without the ability to pay as required by law.

The County further hereby finds and declares that the Corporation intends to finance the purchase of the Healthcare Assets with the issuance of its Health System Revenue Bonds, Series 1999 (Nassau County (NY) Guaranteed) (the "Corporation Bonds"), pursuant to a general resolution of the Corporation and a series resolution relating thereto (collectively, the "Resolution"), and in accordance with a bond purchase agreement (the "Bond Purchase Agreement"), by and between the Corporation and the underwriters with respect to the Corporation Bonds (the "Underwriters").

The County further hereby finds and declares that the Underwriters require, as a condition and as an inducement for them to enter into the transactions contemplated by the Bond Purchase Agreement, that the County provide its guaranty with respect to the Corporation Bonds (the "Guaranty").

The County further finds and declares that Chapter 9 of the Laws of 1997 (the "Act") authorizes the County, pursuant to Section Seven of Article Seventeen of the New York State



Constitution, to lend its money or credit to or in aid of the Corporation or any subsidiary thereof for the purpose of providing health related facilities or hospital facilities for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition, and for facilities incidental or appurtenant thereto as may be prescribed by local law.

The County further finds and declares that the Act requires, as a condition to any such loan of money or credit to the Corporation or such subsidiary thereof, the County shall authorize, also by local law, and enter into, a regulatory agreement with the Corporation as to the Corporation's charges, profits, dividends and disposition of its property or franchises.

The County further finds and declares that the Act permits the County to elect in such regulatory agreement to refrain from exercising all or any portion of its authority to so regulate such charges, profits, dividends and disposition of property and franchises to the extent such charges, profits, dividends and disposition of property or franchise are regulated by the State of New York or any agency thereof.

**Section 2. Prescription of Facilities.** Pursuant to the authority conferred upon the County in the Act, the County hereby specifies the following health related facilities and hospital facilities for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition and certain facilities incidental or appurtenant thereto to constitute the Healthcare Assets to be provided by the Corporation with funds derived from the issuance of the Corporation Bonds which will be guaranteed by the Guaranty:

- a. Nassau County Medical Center,
- b. A. Holly Patterson Geriatric Center,
- c. Elmont Community Health Center,
- d. Freeport-Roosevelt Health Center,
- e. Inwood-Lawrence Health Center,
- f. Long Beach Health Center,
- g. Hempstead Health Center,
- h. New Cassel/Westbury Health Center,
- i. Nassau County Department of Health Office of Home Care,
- j. HealthFirst, Inc. and its affiliates,
- k. Meadowbrook Medical Education and Research Foundation, Inc.,
- l. Nassau County Medical Center Practice Plan, and
- m. any other facility constituting an Asset as defined in the Acquisition Agreement.

**Section 3. Regulatory Agreement.** Pursuant to the authority conferred upon the County by the Act, the County Executive is hereby authorized to execute and deliver a regulatory agreement (the "Agreement"), the form and contents of which are hereby approved, on behalf of the County, substantially in the form presented. The County Executive prior to such execution, may make any changes in the Agreement from the form thereof submitted to the meeting at which this title was adopted which are deemed necessary or advisable by him and which are approved by Bond Counsel to the County as deemed necessary or advisable for the purposes of curing or correcting any ambiguity, omission or manifest error or inconsistency therein or which in the opinion of Bond Counsel to the County are not inconsistent with the tenor and substance of the Agreement in the form thereof submitted. The County Executive's execution and delivery of the Agreement shall be presumptive evidence of his approval of any such changes or other terms or conditions. The County Executive is hereby further authorized to execute and deliver, on behalf of the County, such other agreements, contracts, documents, instruments or authorizations as may be contemplated by, or necessary or advisable to consummate or otherwise give full effect to, the

Agreement and to this title, and which are deemed necessary or advisable by Bond Counsel to the County to effectuate the transactions contemplated by the Agreement, and to perform all acts and do all things required or contemplated to be performed or done by the Agreement or by this title or by any agreement, contract, document, instrument or authorization approved, contemplated or authorized hereby.

Section 4. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

(Added by Local Law No. 10-1999, in effect September 2, 1999.)

## TITLE 37

### PAYMENTS IN LIEU OF TAXES

(Added by Local Law No. 20-1999, in effect December 15, 1999; repealed by Local Law No. 22-2002, in effect November 20, 2002.)

## TITLE 38

Section	1.	Legislative intent
	2.	Definitions
	3.	Limitations and restrictions
	4.	Penalties
	5.	Severability
	6.	Effective date

Section 1. **Legislative intent.** The purpose of this law is to limit access to tobacco products by Nassau County's children and youth and to protect children and young people against the dangers of smoking encouraged by tobacco marketing.

#### Section 2. **Definitions.**

1. "Point of sale advertising" shall mean all printed and/or graphic materials bearing brand name, logo, symbol, motto, selling message or any other identifiable description of the product which when used for its intended purpose can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.
2. "Tobacco business" shall mean a sole proprietorship, corporation, partnership or other entity in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail and in which, the sale, manufacture or promotion of other products generates less than 10 percent of total annual gross sales.

### Section 3. **Limitations and restrictions.**

- a) Cigarettes, cigars, chewing tobacco, powdered tobacco, or any other tobacco product or accessories for over-the-counter sale at establishments within the County of Nassau, other than establishments where access is restricted to adults 21 years of age or older or in a tobacco business, shall be stored for sale 1) behind the counter in an area accessible only to establishment personnel or 2) under lock and key or other security device (e.g. buzzer system) by which access to such products or accessories is restricted and controlled by establishment personnel.
- b) Any establishment selling cigarettes, cigars, chewing tobacco, powdered tobacco, or any tobacco product within the County of Nassau, excluding adults-only facilities or a tobacco business, shall not engage in point-of-sale advertising of tobacco products except in an area greater than two (2) feet from any fixture upon or within which candy, trading cards, or toys are displayed for sale.
- c) Audio and visual formats otherwise permitted under the Federal Food and Drug Administration (FDA) may be distributed to adult consumers at the point of sale, but may not be played or shown at the point of sale (i.e. no "static video displays") except in establishments where access is restricted to adults 21 years of age or older or in a tobacco business.

### Section 4. **Enforcement and Penalties.**

- a) This law shall be enforced by the Nassau County Department of Health.
- b) Any violation of any provision of this Law shall be punishable by a fine not exceeding one thousand two-hundred fifty (\$1250.00) dollars. Each day or part of day in which a violation continues shall constitute a separate violation.
- c) Any revenues generated in excess of the administrative costs attributed to the enforcement of this Law shall be used for the Nassau County Department of Health anti-smoking education efforts.

Section 5. **Severability.** If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 4-2000, in effect January 13, 2000; amended by Local Law No. 23-2000, in effect June 19, 2000.)

## TITLE 39

Section	1.	Legislative intent
	2.	Definitions
	3.	Display of Adult Material
	4.	Enforcement & Penalties
	5.	Severability
	6.	Effective date

### Section 1. **Legislative Intent.**

- a) It is the findings and declaration of this Legislature that children, by reason of not possessing well developed intellectual and emotional maturity, are susceptible to being negatively influenced by graphic depiction of sexual and violent images commonly found in adult materials.
- b) It is the further finding that exposure to the graphic depiction of sexual and violent images commonly found in adult materials has a deleterious and destructive effect upon children.
- c) It is the further finding of this Legislature that regulating the display, sale renting and other distribution of adult material is a public purpose properly within the province of County Government in accordance with the New York State Constitution, the Statute of Local Governments and the Municipal Home Rule Law.

### Section 2. **Definitions.**

- a) "Adult Materials" - cartoons, drawings, books, magazines, periodicals, films, audio recordings, slides, videotapes, games, toys, devices or other materials that may not be sold to minors pursuant to New York State Law.

### Section 3. **Display of Adult Material.**

- a) Adult materials shall not be displayed in the same casement as materials which are permitted to be sold to patrons of all ages.
- b) A casement displaying adult materials shall be enclosed and not displayed in a manner visible to all patrons.
- c) A casement displaying adult materials shall be clearly identified as an adult display which is not to be viewed by minors.

### Section 4. **Enforcement & Penalties.**

- a) This law shall be jointly enforced by the Nassau County Commissioner of the Nassau County Department of Health or his/her designee and the Nassau County Commissioner of Consumer Affairs or his/her designee.
- b) Any violation of\* noncompliance with any provisions of this law shall be punishable by a fine not exceeding two-hundred fifty (\$250.00) dollars. Each day or part of day in which a violation continues shall constitute a separate violation.  
(So in original)

## Section 5. **Severability.**

a) If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 6-2000, in effect January 13, 2000.)

## TITLE 40

### NASSAU COUNTY VEHICLE CONTROL ACT

Section	1.	County Insignia Requirements Section
	2.	Prohibited Uses of Vehicles
	3.	Exceptions
	4.	Enforcement
	5.	Separability

Section 1. **County Insignia Requirements.** All county vehicles, other than those which are used in undercover public safety related activities or to which the application of this section would jeopardize the safety or security of the county employee in the course of performing his or her job, shall have affixed, in a size and manner clearly visible to the public, the Nassau County insignia on both the passenger and driver's side of the vehicle.

Section 2. No county vehicles shall be used by a county employee for transportation to or from work unless:

- a) the position to which that employee is assigned requires that employee be on twenty-four hour call as part of the job description of that position, and
- b) in fact, on a regular basis, that employee is likely to be required to use the vehicle for county purposes during times other than the normal work period of the employee.

Section 3. Section 2 of this act shall not apply in those situations in which the use of the vehicle by the county employee is covered by a collective bargaining agreement or in which such employee, who is covered by a collective bargaining agreement, is entitled to the use of such vehicle as a past practice, or in which the use of such vehicle by a county employee is required by state or federal mandates or use required for the county to qualify for reimbursements from the state or federal government that are at least equal in value to the cost to the county of maintaining such vehicle.

Section 4. Determinations with regard to Section 2 shall be made by the department heads and shall be subject to the review of the County Legislature as part of its enforcement of the Fiscal Control Act of 1999.

Section 5. **Separability.** If any clause, sentence, paragraph, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Added by Local Law No. 8-2000, in effect February 28, 2000.)

## TITLE 41

### NASSAU COUNTY EDUCATIONAL RESOURCE CENTER

Section	1.	Legislative Intent
	2.	Establishment of the Educational Resource Center
	3.	Responsibilities of the Educational Resource Center
	4.	Protections Against Teacher Displacement
	5.	Sunset

Section 1. **Legislative Intent.** The County Legislature finds that the residents of Nassau County, who are among the most highly educated in the United States, can provide a valuable resource to supplement, on a voluntary basis, the work of teachers in the public schools of Nassau County. The County Legislature further finds that the occupational and life experiences of the residents of Nassau County when shared with the students of the public schools of Nassau County can provide an effective way to broaden and elevate the career goals of the students. The County Legislature further finds that these occupational and life experiences can provide a credible motivational link for students between the courses taught in the public schools and the post-graduation occupations that assume the knowledge and educational credentials gained as a result of having successfully completed these courses. The County Legislature further finds that there is currently not a forum on a county-wide basis that could make available to all public school districts information regarding the rich diversity of talents and experience that the residents of Nassau County are capable of offering to all the public school students of Nassau County. The County Legislature further finds that such a forum could be established without threatening the displacement of public school teachers by these volunteers since these volunteers will only supplement the educational resources currently available to the public school students of Nassau County and since it is possible to provide for additional protections against such displacement. The County Legislature further finds that upgrading the educational performance of the students of the public schools in Nassau County is crucial to maintaining a highly skilled workforce in Nassau County, which, in turn, is crucial to the economic development and growth of Nassau County. As a result, the County Legislature finds that it is in the best interests of the students, the parents, the teachers, the business community and all residents of Nassau County to establish a Nassau County Educational Resource Center (hereafter referred to as the "Center"). The Center will provide a forum in which to exchange information between the teachers in the public schools of Nassau County and the residents of Nassau County who wish to share with students the benefits of their occupational and life experiences. The intent of the Center would be to facilitate the match-up of volunteers from the community with teachers in the public schools who are

interested in utilizing the knowledge and experience that the volunteers are offering to convey to the students of the public schools of Nassau County.

**Section 2. Establishment of the Nassau County Educational Resource Center.** There is hereby established the Nassau County Educational Resource Center. The Center shall be an independent agency, the director of which shall be appointed by the County Legislature. Prior to the appointment of the director, County Legislature shall appoint an interim coordinator, who shall serve without compensation and who shall seek to secure non-governmental sponsorship of the Center as the means of financing the operation of the Center. The interim coordinator shall not subsequently be eligible to serve as the director of the Center. Upon the securing of commitments of sponsors equaling \$200,000 (two hundred thousand) for the immediate twenty-four month period, the interim coordinator shall report such findings to the County Executive and the County Legislature. Upon the approval of a resolution by the County Legislature and the County Executive, affirming the findings of the interim coordinator regarding sponsorship, the County Legislature shall appoint the director of the Center. The functions of the Center shall be administered by a staff that is not to exceed two (2) individuals, one of whom shall be the director appointed by the County Legislature and one (1) of whom shall be appointed according to the civil service rules and regulations, unless a larger staff is approved by the County Legislature. The Center is authorized to accept from the private sector other donations, including donations of office space, equipment and supplies.

**Section 3. Responsibilities of the Nassau County Educational Resource Center.** The responsibilities of the Nassau County Educational Resource Center shall include:

- a) Developing and implementing an outreach program to make teachers and potential volunteers aware of the Center, its objectives and its services. This outreach effort shall include making information available to each public school district, to each public library, to civic associations and to senior citizens associations in Nassau County regarding the Center, its objectives and its services. This outreach effort shall also include involvement with the business community of Nassau County, including seeking to utilize the communications network of the business community and seeking its material support.
- b) Matching offers to volunteer with requests for volunteers from public school teachers of Nassau County.
- c) Providing information to school districts listing the names of volunteers and their areas of expertise, and facilitating the interviewing of volunteers by teachers, provided, however, that volunteers shall be allowed to participate in classroom presentations only with the approval of the teacher in whose class the presentation will be made and in a manner that conforms with the procedures of the respective school districts. In addition, the Center shall, upon request, also provide names of volunteers and their area of expertise to not-for-profit organizations that provide services to school districts consistent with the intent of this title as expressed in section 1 of this title, provided, however, that such organizations agree to abide by section 3(c) and section 4 of this title, and, further provided that any volunteer who does not wish to have his or her name transferred to such organizations may so designate that preference, and it shall be adhered to by the Center. In addition, such organizations shall not sell or otherwise transfer names of volunteers and their areas of expertise to any other person or organization for a fee or any other form of remuneration.
- d) Making the necessary and appropriate inquiries to verify the credentials of volunteers.

e) Consulting with the Nassau County Police Department to determine, based on information available to the Police Department, the suitability of the volunteers to be present in a school environment. As part of meeting this responsibility, the Center shall provide prospective volunteers with release forms consenting to the Police Department's making such inquiries as are necessary and appropriate for any findings to be included in a Letter of Good Conduct. It shall be the responsibility of the prospective volunteer to request such Letter of Good Conduct. Such Letter of Good Conduct shall be transmitted to the prospective volunteer, with a copy forwarded to the Center on a confidential basis, and the Center shall use the findings in the Letter of Good Conduct in its determination as to the suitability of volunteers to be present in a school environment. The Letter of Good Conduct shall be deemed by the Center to be valid for twenty-four months from the date of issuance. Volunteers shall also make available to the Center all information requested by the Center and all information of their own knowledge necessary to the Center's making this determination. The Center shall have the right, based on the information made available to it through this subsection, to exclude volunteers from participating in the activities of the Center, provided, however, that the Center shall not publicly disclose its reasons for such determination to exclude a volunteer from participation without the consent of the excluded volunteer, unless the excluded volunteer publicly disputes the determination.

f) Receiving assessments from teachers regarding the performance of the volunteers and the usefulness of the presentation of the volunteers to students. As part of this process, a member of the faculty or administration shall be present throughout the presentation of the volunteers. These assessment forms shall be available on a confidential basis to other teachers who seek to participate in this program.

g) Soliciting sponsorship and funding from non-governmental entities, as well as funding from other levels of government.

h) Reporting to the County Legislature and the County Executive in February and July of each year regarding the activities of the Center, including the number of teachers, volunteers and school districts participating, an assessment of the effectiveness of the Center in meeting the objectives specified in section 1 of this Title, the reactions of the participants in the activities facilitated by the Center, the prospects for the procuring of funding from other levels of government, and any recommendations regarding improvements that could be made in the Center and whether the operations of the Center should be continued.

**Section 4. Protections Against Teacher Displacement.** The participation of volunteers in the activities facilitated by the Educational Resource Center shall not displace teachers or other school related personnel in the public schools of Nassau County. In furtherance of this objective, no volunteer shall participate in more than one presentation per month per course per public school district.

**Section 5. Sunset.** The Center shall be terminated on January 1, 2003 unless specifically reauthorized by an act of the Legislature.

**Section 6. Separability.** If any part of or provision of this title or the application thereof to any person or circumstance be adjudged invalid by any Court of competent jurisdiction, such judgment shall be confined in its operation to the part of or the provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect



or impair the validity of the remainder of the title or the application thereof to other persons or circumstances.

(Added by Local Law No. 13-2000, in effect April 10, 2000.)

## TITLE 42

### ADVANCE NOTIFICATION OF AERIAL AND GROUND SPRAYING OF PESTICIDES FOR ADULT MOSQUITO CONTROL

#### Section 1. **Legislative Intent.**

a) Due to possible evidence showing a causal connection between mosquito infestation and the increase of incidents of West Nile Virus, encephalitis and similar diseases on Long Island, it may be necessary for the government of the County of Nassau to commence aerial and ground spraying of pesticides for adult mosquito control to prevent the incidence of the aforementioned diseases. It is of utmost importance for the residents of Nassau County to be given advance notice of any decision of authorized county officials to commence aerial and ground spraying. This law will require the Nassau County Department of Health on behalf of any other county office or agency involved in the application of pesticides for adult mosquito control through aerial spraying or ground spraying to give public notice at least 24 hours prior to commencing aerial or ground spraying.

Section 2. The Nassau County Department of Health on behalf of any county office or agency involved in the application of pesticides for adult mosquito control through aerial spraying or ground spraying shall give at least 24 hours prior notice of the application of the pesticide by notifying the major news media and members of the County Legislature, provided, however, if in the event that the application about which notification has been given has not been carried out, then such spraying shall not be conducted prior to giving new notification at least twenty-four (24) hours regarding such application.

Section 3. The notice required by section 2 shall include the following information:

- a) The date and time at which aerial or ground spraying of any pesticide for adult mosquito control shall commence;
- b) The duration of the aerial or ground spraying;
- c) The location, with the maximum specificity that is reasonably possible, of the aerial or ground spraying;
- d) The name of the pesticide being applied by aerial or ground spraying;
- e) Any health concerns related to the application of the pesticide;
- f) Advice to residents as to safety precautions recommended by knowledgeable health personnel;
- g) Any other information deemed relevant by the Department of Health of Nassau County;
- h) The method of spraying.

#### Section 4. **Severability.**

- a) If any part or provision of this local law or the application thereof to any person, entity, or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities or circumstances.

(Added by Local Law No. 30-2000, in effect August 23, 2000.)

## TITLE 43

### ADOPTING COUNTYWIDE NOTIFICATION REQUIREMENTS FOR COMMERCIAL AND RESIDENTIAL LAWN PESTICIDE APPLICATIONS

- |         |    |   |
|---------|----|---|
| Section | 1. | Legislative Intent  |
|         | 2. | Definitions   |
|         | 3. | Special Requirements for Commercial and Residential Lawn Applications |
|         | 4. | Enforcement   |
|         | 5. | Separability  |

Section 1. **Legislative Intent.** This Legislature finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. This Legislature further finds and declares that pesticides may pose serious health and safety risks to people, particularly children, pregnant women, the elderly and infirm, and that citizens have the right to know about pesticides to which they may be exposed from applications to neighboring properties so that they can take steps to minimize such exposure to themselves, their families, pets, crops, livestock, backyard wildlife and property.

Section 2. **Definitions.** All terms used herein shall be as defined in section 33-0101 of the New York State environmental conservation law as amended.

#### Section 3. **Special Requirements for Commercial and Residential Lawn Applications.**

a. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner of the New York State Department of Environmental Conservation pursuant to subdivision one of section 33-1005 of the New York State Environmental Conservation Law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of the New York State Environmental Conservation Law, to occupants of all dwellings, as defined in paragraph d of subdivision five of section 33-0905 of the New York State Environmental Conservation Law, on abutting property with a boundary that is within one hundred fifty feet of the site of

such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises, as defined in paragraph d of subdivision five of section 33-0905 of the New York State Environmental Conservation Law, that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the Commissioner of the New York State Department of Environmental Conservation.

- (ii) The prior notification provisions of this paragraph shall not apply to the following:
- A. the application of anti-microbial pesticides and anti-microbial products as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);
  - B. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;
  - C. the use of non-volatile insect or rodent bait in a tamper resistant container;
  - D. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
  - E. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
  - F. the use of boric acid and disodium octaborate tetrahydrate;
  - G. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
  - H. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder,
  - I. the application of a pesticide by direct injection into a plant or the ground;
  - J. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;
  - K. the application of a pesticide to the ground or turf of any cemetery; and
  - L. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such

application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the State Commissioner of Health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

- c. (i) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.
- (ii) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

Section 4. **Enforcement.** This law will be enforced concurrently by the Nassau County Department of Health and the New York State Department of Environmental Conservation, pursuant to subdivision two of section 33-1004 of the New York State Environmental Conservation Law.

Section 5. **Separability.** If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 41-2000, in effect December 28, 2000.)

## TITLE 44\*\*

### AID TO VILLAGES WITHIN NASSAU COUNTY

- Section      1.      Legislative Intent.  
                 2.      Aid to Villages within Nassau County.  
                 3.      Separability.  
                 4.      Effective Date.

Section 1. **Legislative Intent.** Pursuant to New York State Law Ch. 407, Pt. LL, Sec. 12 of 1999, The County of Nassau, by local law, is empowered to enact and establish a local government assistance program for the villages within Nassau County to assist such villages to minimize real property taxes; defray the cost and expense of the treatment, collection, management, disposal and transportation of municipal solid waste; and defray the cost of maintaining conservation and environmental control programs.

Section 2. **Aid to villages within Nassau County.** Notwithstanding any other provision of law to the contrary, each of the below listed villages, each within Nassau County, shall be paid and distributed a portion of the sales and use tax on a per capita basis using the population figures in the latest decennial federal census the cumulative total of such aid equaling .00261 (one divided by three hundred-eighty-three) of the revenues received from the imposition of three-quarters percent sales and use tax that are remaining after the towns and cities have received their funding pursuant to the provisions of subdivision one of this section.

Atlantic Beach	Baxter Estates	Bayville
Bellerose	Brookville	Cedarhurst
Centre Island	Cove Neck	East Hills
East Rockaway	East Williston	Farmingdale
Floral Park	Flower Hill	Freeport
Garden City	Great Neck	Great Neck Est.
Great Neck Plaza	Hempstead	Hewlett Bay. Park
Hewlett Harbor	Hewlett Neck	Island Park
Kensington	Kings Point	Lake Success
Lattingtown	Laurel Hollow	Lawrence
Lynbrook	Malverne	Manorhaven
Massapequa Park	Matinecock	Mill Neck
Mineola	Munsey Park	Muttontown
New Hyde Park	North Hills	Old Brookville
Old Westbury	Oyster Bay Cove	Plandome
Plandome Hts.	Plandome Manor	Pt. Washington
Rockville Centre	Roslyn	Roslyn Estates
Roslyn Harbor	Russell Gardens	Saddle Rock
Sands Point	Sea Cliff	S. Floral Park
Stewart Manor	Thomaston	Upper Brookville
Valley Stream	Westbury	Williston Park
Woodsburgh		

Section 3. **Separability.** If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or

unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 39-2000, in effect December 20, 2000.)

\*\*(Note- Effective from January 1, 2001 to December 31, 2001.)

## TITLE 45

### CHILD HELMET SAFETY LAW

#### Section 1. **Legislative findings.**

a) The legislature of Nassau County hereby finds that young persons riding or operating foot powered scooters or skateboards on public and private roads, on sidewalks, and in other places are at risk of sustaining serious injury due to falls occurring while the operator is riding at high speed; and that incidence of serious injuries are reduced by the wearing of safety helmets and other safety equipment; and that a law requiring young persons to protect themselves by using safety equipment including safety helmets is in the public interest.

#### Section 2. **Helmet requirements.**

- a) No person under age fourteen years shall operate a foot powered scooter or skateboards or ride as a passenger on a foot powered scooter unless such operator or passenger is wearing a helmet meeting the standards of the American National Standards Institute (Ansi Z 90.4 bicycle helmet standards) or of the Snell Memorial Foundation 1984 Standard for Protective Headgear for Use in Bicycling or by the United States Consumer Product Safety Commission, as last revised by said organizations.
- b) For the purposes of this law, "wearing helmet," means having a helmet of good fit fastened securely upon the head with the helmet straps.

#### Section 3. **Enforcement.**

- a) The Nassau County Police Department shall take any and all actions to enforce this law in any court of competent jurisdiction.
- b) A police officer shall only issue an appearance ticket or summons and local criminal court accusatory instrument, as those terms are defined in the Criminal Procedure Law, for a violation of section 2 of this Law by a person less than fourteen years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person's parent or guardian and where such parent or guardian is eighteen years of age or more. Such appearance ticket or summons and local criminal court accusatory instrument shall only be issued to such parent or guardian, and shall not be issued to the person less than fourteen years of age.

#### Section 4. **Civil Penalty.**

a) Any person who receives an appearance ticket or summons and local criminal court accusatory instrument under Section 3 (b) of this Act shall pay a civil fine not to exceed \$50.

#### Section 5. **Waiver of fine.**

a) The court may waive any fine for which a person who violates the provisions of section 2 of this law if such person supplies the court with proof that between the date of violation and the appearance date for such violation such person purchased a helmet. Such waiver of said fine shall not apply to a second subsequent conviction under Section 2 of this law.

b) The court may waive any fine for which a person who violates the provisions of section 2 of this law if the court finds that due to reasons of economic hardship such person was unable to purchase a helmet.

#### Section 6. **No effect upon personal injury or wrongful death lawsuit.**

a) The failure of any person to comply with the provisions of this law shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.

#### Section 7. **Severability.**

a) If any part or provision of this local law or the application thereof to any person, entity, or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities or circumstances.

(Added by Local Law No. 5-2001, in effect April 17, 2001.)

## TITLE 46

### REGULATION OF THE USE OF MOBILE TELEPHONES

Section	1.	Legislative Intent.
	2.	Definitions.
	3.	Prohibitions.
	4.	Penalties.
	5.	Separability.

Section 1. **Legislative Intent.** The extensive growth in the wireless communications industry over the last ten years has been accompanied by growing concern for the potential hazards of drivers using wireless communications devices from moving vehicles projected to

reach 80 million cellular telephone users in the United States by the end of 2000. The operations of motor vehicles on public roadways while using hand-held mobile telephones may cause the operator to maintain less than full-time attention to the operation of said motor vehicle so requiring regulation of the use of mobile telephones while operating motor vehicles within the County of Nassau, so as to enhance the safety of motor vehicles operators, passengers in the vehicles and pedestrians.

Section 2. **Definitions.** As used in this Title, the following terms shall have the meanings indicated:

- A) "Use" shall mean talking or listening or dialing on a mobile telephone.
- B) "Hands-Free Device" shall mean an internal device, attachment, add-on, or addition to a mobile telephone, whether or not permanently installed in the motor vehicle, that when used allows the operator of a motor vehicle to maintain both hands (or prosthetic device or aid in the case of a physically handicapped person) on the applicable steering device.
- C) "Mobile Telephone" shall mean, including, but not limited to, cellular, analog, wireless and digital telephones capable of sending or receiving telephone communications with an access line for service.
- D) "Authorized emergency vehicle" shall mean every ambulance, police vehicle or bicycle, correction vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle and ordinance disposal vehicle of the armed forces of the United States.

(Subdivision D added by Local Law No. 8-2001, in effect June 21, 2001.)

### Section 3. **Prohibition.**

A) No person shall use a mobile telephone while operating a motor vehicle on any public street or public highway within the County of Nassau, while the motor vehicles is in motion on such public street or public highway, unless such mobile telephone is equipped and used with a hands-free device provided, however, that the operator of an authorized emergency vehicle, when using a mobile telephone in furtherance of their sworn duties, shall be exempt from the provisions of this title; provided, further, that it shall not be prohibited for an individual, who is otherwise using a hands-free device as defined in this title, to turn the mobile phone on or off while operating a motor vehicle; provided, further, in the case of an emergency phone call, it shall be an affirmative defense for an individual to produce documentary evidence that the phone call which represents the alleged violation was made for the sole purpose of contacting:

- 1. a 911 emergency telephone number or any successor emergency number thereto;
- 2. a hospital;
- 3. an ambulance company or corps;
- 4. a fire department, fire district or fire company;
- 5. a health clinic,
- 6. a medical doctor's office;
- 7. a first aid squad; or



8. a police department.  
(Subdivision A amended by Local Law No. 8-2001, in effect June 21, 2001.)

#### Section 4. **Penalties.**

- A) Any violation of any provision of Section 3 of this law shall constitute an offense and be punishable by a fine not to exceed \$100 (one hundred dollars) for each violation. Each such violation shall constitute a separate and distinct offense.
- B) This law shall be enforced by the Nassau County Police Department, the County Sheriff's Department and sworn officers, as defined in Section 1.20(34) of the New York State Criminal Procedure Law, of an authorized Police Department or force of a town or of a village within the geographic boundaries of Nassau County.
- C) This law may be enforced anywhere within the geographic boundaries of Nassau County.

Section 5. **Separability.** Any clause, sentence, paragraph, subdivision, section, or any part of this title or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be judged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, division, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 6-2001, in effect July 1, 2001.)

## TITLE 47

### NASSAU COUNTY OPEN SPACE AND PARKS ADVISORY COMMITTEE

- |         |  |
|---------|--|
| Section | 1. Legislative Intent.   |
|         | 2. Establishment of the Nassau County Open Space and Parks Advisory Committee, or OSPAC.   |
|         | 3. Powers and Duties of OSPAC.   |
|         | 4. Criteria for Review and Evaluation of Open Space, Parks and Areas of Recreational, Cultural, Archeological, Habitat or Historic Significance or of an Otherwise Environmentally Sensitive Nature. |

Section 1. **Legislative Intent.** Nassau County's open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature are valuable resources that should be the subject of thorough and on-going review, evaluation, and, where appropriate, recommendations with respect to the issues of acquisition, preservation, protection, restoration or enhancement. Such review, evaluation, and, where appropriate, recommendations would benefit from having a specific entity that would provide advice regarding options with respect to these valuable resources. A Nassau County Open Space and Parks Advisory Committee is the appropriate entity to carry out these responsibilities with respect to these resources.

**Section 2. Establishment of the Nassau County Open Space and Parks Advisory Committee.**

- a) There is hereby established a Nassau County Open Space and Parks Advisory Committee (hereafter referred to as "OSPAC") that shall provide advice to the Nassau County Planning Commission on preserving, protecting, restoring and enhancing open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature in Nassau County. OSPAC shall be comprised of nine members. The Presiding Officer of the County Legislature shall have four appointees, the Minority Leader of the County Legislature shall have two appointees, and the County Executive shall have two appointees and the Nassau County Planning Commission shall have one appointee, all of whom shall have experience in or be a representative from an organization dedicated to at least one of the following areas of interest: environment, open space; land use planning; land conservation; habitat preservation; archeology; historic, cultural or park preservation, protection, restoration and enhancement; or municipal financing.
- b) The terms of two of the appointees of the Presiding Officer shall be for three years from the date of appointment. The initial term of one of the appointees of the Minority Leader shall be for three years from the date of appointment. The initial term of one of the appointees of the County Executive shall be for three years from the date of appointment. The initial term of the appointee of the Nassau County Planning Commission shall be for three years from the date of appointment. The initial terms of all other members of OSPAC shall be for two years from the date of appointment. All subsequent terms of all members of OSPAC shall be for two years from the date of the expiration of the term of the position being filled. All of the initial appointments shall be made not later than one month after this title is enacted into law. The chair of OSPAC shall be chosen by a vote of at least five members of OSPAC.
- c) If any member of OSPAC attends less than thirty percent (30%) of the meetings of OSPAC conducted during a twelve-month period, then the position of the term of which said member had been occupying shall be deemed vacant.
- d) No members of OSPAC shall receive any compensation or salary for service on OSPAC.
- e) OSPAC shall conduct its initial meeting within thirty (30) days of the initial appointment of at least five (5) of its members.

**Section 3. Powers and Duties of OSPAC.** The powers and duties of OSPAC in connection with providing advice to the Nassau County Planning Commission shall include the following:

- a) developing any appropriate criteria, in addition to those listed in section 4 of this title, to assist in identifying and prioritizing open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature for the purpose of considering their acquisition, preservation, protection, restoration or enhancement. As part of the development of these criteria, OSPAC shall refer to and consider utilizing the criteria articulated in the Nassau County Open Space Plan of March 2001 for identifying and prioritizing these areas.
- b) utilizing the criteria referred to in Section 3 a) of this title, to assist in identifying and prioritizing open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature for the

purpose of considering their acquisition, preservation, protection, restoration or enhancement.

- c)
  - (i) Identifying financing mechanisms, including mechanisms involving assistance from other levels of government, to fund the acquisition, preservation, protection, restoration or enhancement of open space, parks, and areas of recreational, cultural archeological, habitat or historic significance or of an otherwise environmentally sensitive nature that have been identified and prioritized utilizing the criteria listed in this title or authorized by it to be developed. As part of identifying these mechanisms, OSPAC shall refer to and consider utilizing the mechanisms and criteria articulated in the Master Plan as developed pursuant to section sixteen hundred and four-a of the Charter to fund the acquisition, preservation, protection, restoration or enhancement of these areas. Such mechanisms shall include, but not be limited to: private funding; federal grant and funding programs; state programs and grants; the submission to the state legislature or to the voters of measures to authorize taxes or obligations to fund open space purposes; and potential local funding sources such as, to the extent permitted by law, fines or penalties imposed by the Planning Department and Fire Marshall for violations of county environmental laws, ordinances or regulations.
  - (ii) The Planning Department and the Fire Commission shall each prepare an annual report analyzing the ways which, to the extent permitted by law, the fines or penalties imposed by such departments for land use development and environmental violations can be used for the purposes of open space acquisition. Such report shall be submitted before the first day of January each year to OSPAC, the Committee on Planning, Development and the Environment of the Legislature and the Office of the County Attorney.
  - (iii) OSPAC shall submit a report pursuant to this subdivision to the County Executive, the County Attorney, the Committee on Planning, Development and the Environment of the Legislature and the Planning Commission at least twice each year, in the months of January and July. Such reports shall: (a) contain recommendations for the funding of open space acquisition; (b) describe and update the research by OSPAC required pursuant to paragraph (i) of this subdivision into such funding sources and the status of its efforts to obtain such funding; and shall (c) include, but not be limited to, a description of existing, new and potential funding sources, including the potential sources identified by the Fire Department and the Planning Department pursuant to paragraph (ii) of this subdivision.

(Subdivision c amended by Local Law No. 7-2003 § 4, in effect May 28, 2003.)

- d) identifying other mechanisms, including the transfer or purchase of development rights, the establishment of conservation easements, or the establishment of public/private partnerships with the goal of acquiring, preserving, protecting, restoring or enhancing open space, parks, and areas of recreational, cultural or historic significance or of an environmentally sensitive nature. As part of identifying these mechanisms, OSPAC shall refer to and consider utilizing the mechanisms articulated in the Nassau County Open Space Plan of March 2001 to acquire, preserve, protect, restore or enhance these areas.
- e) reviewing all leases of county land to non-governmental entities and all long-term use and occupancy permits of county land and to make recommendations to the Nassau

County Planning Commission with respect thereto regarding the acquisition, reservation, protection, restoration or enhancement of open space, parks, and areas of recreational, cultural, archeological, habitat, or historic significance or of an otherwise environmentally sensitive nature.

f) requesting through the Nassau County Planning Commission and receiving the cooperation of any department, division, board, bureau, commission or any other agency of the county as may be necessary to for OSPAC to carry out the intent of this title.

g) reporting to the Nassau County Planning Commission by June 30 and December 31 of each year as to the dates and subject matter of any public or private meetings conducted by it during the previous six months or since its inception, and as to any analyses or findings by it during the previous six months or since its inception.

h) making recommendations to the Nassau County Planning Commission based upon the powers and duties authorized by this title, with respect to the acquisition, preservation, protection, restoration or enhancement of open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature. Copies of these recommendations shall be forwarded by the Nassau County Planning Commission to the Nassau County Legislature and the County Executive. Not later than six months after receiving the recommendations from OSPAC, the Nassau County Planning Commission shall issue a report commenting in detail on said recommendations.

#### **Section 4. Criteria for the Review and Evaluation of Open Space, Parks, and Areas of Recreational, Cultural or Historic Significance or of an Environmentally Sensitive Nature.**

The following criteria, in addition to those that section 3 of this title authorizes OSPAC to adopt, shall be utilized by OSPAC to fulfill its duties and responsibilities as set forth in section 3 of this title for the acquisition, preservation, protection, restoration or enhancement of open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature:

a) the project will further the goals and requirements contained in the New York State Open Space Conservation Plan, the Nassau County Open Space Plan, the State Comprehensive Outdoor Recreation Plan, the New York State Waterfront Revitalization and Coastal Resources Act, the Nassau County Comprehensive Plan, the New York Natural Heritage Program, the Comprehensive Conservation and Management Plan for Long Island Sound, the South Shore Estuary Reserve Comprehensive Management Plan, the County Groundwater Study, the State Environmental Quality Review Act, the State Coastal Zone Management Act, and the State Special Groundwater Protection Area Management Plan, or other federal, state, county, town or city plans or programs related to open space, parks, and areas of recreational, cultural, archeological, habitat or historic significance or of an otherwise environmentally sensitive nature.

b) the project will preserve, protect, restore and enhance environmentally sensitive areas or new or existing recreation lands, including open space, parks, cultural resources, historic and archeological properties, coastal and habitat areas, beaches, waterfronts, waterways, wetlands, and marinas.

c) the project will preserve, protect, restore and enhance important natural areas of environmental significance or with rare or unique features or an environmental, cultural, archeological, habitat or historic nature.

(Added by Local Law No. 9-2001, in effect June 29, 2001.)

## TITLE 48

### BODY-PIERCING AND TATTOOING LAW

#### Section 1. **Legislative Intent.**

- a) The County Legislature of the County of Nassau hereby finds that:
  - i) tattoo and body piercing operations and procedures are becoming more and more common among minor residents of the County of Nassau;
  - ii) there exists a very real and distinct possibility of the transmission of serious infectious diseases from the tattooing or body piercing of a person if a tattoo artist or body piercer is not sufficiently skilled and knowledgeable of the dangers associated with said activity and
  - iii) the reasonable regulation of tattoo and body piercing operations and procedures is in the best interest of the residents of the County of Nassau.

#### Section 2. **Definitions.**

- a) "Tattoo" means any indelible design, letter, scroll, figure, symbol, or other mark placed with the aid of needles or other instruments; or any design, letter, scroll, figure, or symbol done by scarring upon or under the skin.
- b) "Apply a tattoo" means any modification, cutting, scarification, piercing or branding of the mucous membranes or the skin through which needles or other items are inserted or applied for temporary or permanent placement of a tattoo upon a person.
- c) "Engaged in Body Piercing" means the perforation of any human body part other than the ear lobe for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose.
- d) "Entity" means any individual, association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, real estate investment trust, business trust or other trust, custodian, nominee or any other similar organization or individual in its own or any representative capacity.
- e) "Department" means the Nassau County Department of Health.
- f) "Minor" means a person under the age of eighteen (18) years.

#### Section 3. **License Required.**

- a) No entity shall apply a tattoo or be engaged in body piercing unless such entity is licensed to do the same by the Department.

#### Section 4. **Prohibition.**

- a) In accordance with §260.21 of the New York State Penal Law, no entity shall knowingly apply a tattoo to a minor.
- b) No entity shall be engaged in body piercing upon the body of a minor unless at least one (1) parent or legal guardian of the minor consents to same in a notarized writing signed by the parent or legal guardian of the minor.

#### **Section 5. Penalties.**

- a) Any entity or person who knowingly and willfully violates this law shall be fined in the sum of not more than \$750 for the first violation, and in the sum of not less than \$500 and not more than \$1,500 for the second violation, and in the sum of not less than \$1,000 and not more than \$3,000 for third and subsequent violations.

#### **Section 6. Injunctive Relief and Availability of Temporary Restraining Order.**

- a) Nothing herein shall be deemed to limit the availability of a temporary restraining order, temporary injunction or permanent injunction in accordance with the laws of New York State.

#### **Section 7. Department to Promulgate Regulations.**

- a) The Department shall, within ninety (90) days after the effective date of this section of this law, promulgate regulations to establish qualifications for licensing and enforcement thereof in accordance with this law.

#### **Section 8. Severability.**

- a) If any part or provision of this local law or the application thereof to any person, entity, or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or the application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons, entities or circumstances.

(Added by Local Law No. 10-2001, in effect July 3, 2001.)

## **TITLE 49**

### **CARBON DIOXIDE EMISSIONS REGULATION**

Section	1.	Legislative Intent
	2.	Definitions
	3.	Requirements
	4.	Penalties
	5.	Severability
	6.	Applicability

**Section 1. Legislative Intent.** This Legislature hereby finds and determines that the growing economy and the use of new electrical devices by Nassau County customers has dramatically driven up demand for electricity, potentially beyond the availability of our current power supply; that without comparable increases in power generation to meet the demand or increased emphasis on energy conservation, the county will face brownouts and blackouts as well as price spikes; and that energy experts have recommended several measures to address the potential power crisis, including the construction of new generating plants.

This Legislature further finds and determines that these concerns are occurring while the utility industry is being deregulated, e.g., in April 1996, The Federal Energy Regulatory Commission ("FERC") ordered utilities that own, control or operate facilities used for transmitting electric power to let other companies buy and sell power over their distribution systems and in May 1996, the New York State Public Service Commission ("PSC") issued an initial restructuring plan that permitted competition for the production and sale of electricity to begin in 1998. As a result, the production and sale of electricity is beginning to open to competition so that customers can decide from which company they will purchase electricity.

This Legislature further determines that deregulation of the industry and the high market demand for electricity by county consumers has resulted in a surge of entities applying for permits to build new generating plants within the county or to expand the output of existing ones, the proposed construction of which raises environmental concerns.

This Legislature also determines that many of the applicants seeking to run the proposed plants will continue to operate older less efficient, less environmentally sound plants in tandem with newer, more efficient, less polluting plants; that the cumulative impact of emissions from the clustering of plants is unknown; and that the amount of harmful emissions which new power plants will emit, in particular, the impact of - emissions such as carbon dioxide ("CO<sub>2</sub>"), responsible for such environmental hazards as global warming is of concern.

This Legislature finds that companies proposing the construction of new power plants or increased generation make numerous assurances that the new technologies will be utilized for new power plants, which will not only increase overall efficiency but will also reduce harmful emissions, even though many of these companies intend to continue to utilize older, less efficient polluting facilities.

This Legislature also determines that the need for expanding energy sources requires the implementation of a strategy that takes into account the protection of the environment as well as energy needs.

This Legislature finds that, over time, CO<sub>2</sub> emissions rates will decrease, as more efficient power plants are installed and older power plants incorporate more efficient processes for generating greater levels of electricity without increasing the use of fossil fuels, the end result of which will be a cleaner, healthier environment for the county's citizens, without a sacrifice in energy demands.

Therefore, the purpose of this law is to encourage owners of existing power plants and steam generating facilities, as well as newcomers to the Nassau County electric and steam generating power industry, to maximize efficiency by incorporating technological advances in energy production that increase electricity generation through the establishment of a rate of allowable carbon dioxide emissions per megawatt-hour, or equivalent megawatt-hour of generated electricity, for all power plants and steam generating units located in the county to protect the health, safety, and well-being of Nassau County residents. This law would not require an increase in fossil fuel consumption, and, thus, do not increase carbon dioxide emissions.

**Section 2. Definitions.** As used in this law, the following terms shall have the meanings indicated:

A.) "Electric Generating Unit" shall mean any fossil fuel fired combustion unit or a combination of units at a single facility located in the County of Nassau with a single or aggregate nameplate capacity of more than 25 megawatts that serves as a generator which produces electricity for use or sale or any fossil fuel fired combustion unit located in the County of Nassau that produces steam for sale.

B.) "Steam Generating Unit" shall mean any fossil fuel fired combustion unit or a combination of units at a single facility located in the County of Nassau with a capacity of more than 25 megawatts that serves as a generator that produces electricity for use or sale or any fossil fuel fired combustion unit located in the County of Nassau that produces steam for sale.

### Section 3. **Requirements.**

A.) The provisions of this section shall apply to every electric generating unit and steam generating unit located within the County of Nassau.

B.) Notwithstanding any other provision of law, the County Department of Health ("Department"), shall develop standards for reductions in emissions of carbon dioxide by electric generating units and steam generating units in accordance with the provisions of this section. The Department shall promulgate rules, including, but not limited to, a quarterly reporting requirement, no later than May 1, 2002, in relation to reducing such emissions of carbon dioxide. The Department shall require all electric generating units and steam generating units to comply with an emission standard expressed in pounds of carbon dioxide emitted per megawatt-hour of electricity generated.

- 1.) No later than July 1, 2002, the Department shall set an emissions rate for carbon dioxide emissions for all electric generating units and steam generating units at a level of one thousand eight hundred (1,800) pounds of carbon dioxide per gross megawatt-hour (MWh) or equivalent MWh of electricity generated. Equivalent MWh is defined as one hundred percent of the gross electrical energy produced by a unit plus one half the gross useful thermal output energy of the unit converted to MWh according to the following equation: 
$$\text{total gross MWh} + (0.5)(\text{gross thermal output mmBtu}) / (3.413 \text{ mmBtu/MWh}) = \text{equivalent MWh}.$$
 On July 1, 2002 and every July 1st thereafter, the allowable County-wide emissions rate for carbon dioxide shall be reduced by one percent (1%) for every one hundred megawatts of electric generating capacity installed within the County of Nassau during the previous year until such time as the allowable emissions rate for carbon dioxide has been reduced by twenty percent (20%). Any new capacity above the baseline emission rate shall be excluded for the purpose of setting a lower emission rate. However, all new electric generating capacity shall be required to meet the lower emission rate. Generating facilities that could normally comply through a strategy of burning natural gas fuel shall not be subject to non-compliance enforcement for MWhs produced when they are compelled by established electric system reliability rules to burn fuel oil.
- 2.) The Department shall establish a carbon dioxide emission credit trading mechanism to be approved by the Nassau County Legislature and allow the operators of all electric generating units and steam generating units subject



to this section to achieve compliance through the purchase of carbon dioxide emission credits through established carbon dioxide trading market or by acquiring the equivalent value of such carbon dioxide credits by investments it, or the electric distribution company to which it sells energy, makes in energy conservation, energy efficiency, research and development of alternative energy sources including, but not limited to, solar, wind, fuel cells, and other strategies that reduce carbon dioxide emissions. In addition, after approval by the Nassau County Legislature via duly enacted resolution of the County of Nassau, the Department may allow the operators of electric generating units and steam generating units (or the electric distribution company to which it sells energy) subject to this section to achieve compliance through donation of penalties to community environmental organizations for implementation of strategies that reduce carbon dioxide emissions in Nassau County. Credit shall be allowed for equivalent energy reductions made through investments since 2002.

- 3.) The emission standards for carbon dioxide required by this section shall not be construed to supersede more stringent emission standards, limitations, and/or practices that are applicable to electric generating units on the effective date of this law or may be applicable after such effective date.

#### Section 4. **Penalties.**

A.) Operators of electric generating units or steam generating units who fail to meet the obligations and requirements of Section 3 of this law shall be subject to civil fines after a due process hearing as follows:

- 1.) an amount equal to two dollars (\$2.00) for each ton of carbon dioxide emissions in the first year above the requirements set forth in this section.
- 2.) an additional one dollar (\$1.00) for each ton of carbon dioxide emissions above the requirements set forth in this section shall be imposed for each consecutive year thereafter that the electric generating unit or steam generating unit fails to meet its obligations pursuant to the requirements of this law.
- 3.) such amounts shall be collected by the appropriate agency designated by the Department.
- 4.) the Department shall submit an annual report (July 31 of each year) to the County Executive and the County Legislature and the County Comptroller regarding the amount of the fines collected pursuant to this section.

Section 5. **Severability.** If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 6. **Applicability.** This law shall apply to all actions occurring on or after the effective date in accordance with the phased in schedule set forth in Section 3 of this law. (Added by Local Law No. 3-2002, in effect April 22, 2002.)

## TITLE 50

### LOCAL LAW REQUIRING CLERGY TO REPORT INCIDENCES OF SEXUAL ABUSE OR OTHER UNLAWFUL CONDUCT AGAINST MINORS TO THE NASSAU COUNTY DISTRICT ATTORNEY

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|---------|----|--|
| Section | 1. | Findings and Purpose.  |
|         | 2. | Definitions.   |
|         | 3. | Persons and officials required to report cases of suspected sexual abuse or other unlawful conduct against minors. |
|         | 4. | Confidential communication to clergy.  |
|         | 5. | Penalties for failure to report.   |
|         | 6. | Sunset.  |
|         | 7. | Severability.  |

Section 1. **Findings and purpose.** In view of the reports of sexual abuse of minors involving clergy, and in addition, reports that this abuse has occurred over a period of time and was not reported to the proper law enforcement agency, it is the purpose of this Local Law to require clergy to report cases of sexual abuse or other unlawful conduct against minors to the Nassau County District Attorney's office. Minors who are the victims of sexual abuse or other unlawful conduct by Clergy in Nassau County are in urgent need of protection to prevent them from suffering further injury and impairment.

Section 2. **Definitions.** When used in this local law and unless the specific context indicates otherwise:

1. The term "Clergy" includes a duly authorized bishop, pastor, rector, priest, rabbi, minister, imam, nun, or a person regularly practicing such profession within the County of Nassau, and having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church, synagogue, mosque, temple, or other religious entity in connection with the spiritual affairs of the church, synagogue, mosque, temple, or other religious entity.
2. The term "minor" means anyone under the age of seventeen.
3. The term "sexual abuse or other unlawful conduct " shall include stalking, sexual misconduct, rape, sodomy, forcible touching, persistent sexual abuse, sexual abuse, aggravated sexual abuse, course of sexual conduct against a child, facilitating a sex offense with a controlled substance, coercion, harassment, aggravated harassment, endangering the welfare of a child, endangering the welfare of an incompetent or physically disabled person, use of a child in a sexual performance, promoting an obscene sexual performance by a child, possessing an obscene sexual performance by a child, promoting a sexual performance by a child, and possessing a sexual performance by a

child, occurring within the County of Nassau, all as defined in the New York State Penal Law.

**Section 3. Persons and officials required to report cases of suspected sexual abuse or other unlawful conduct against minors.** All clergy, as defined in this Local Law, shall be required to report or cause a report to be made, within three (3) business days, to the Nassau County District Attorney when they have reasonable cause to suspect that a minor is or has been the victim of sexual abuse or other unlawful conduct.

**Section 4. Confidential communication to clergy.** No provision of this Local Law is intended to affect any privilege pursuant to the Civil Practice Law and Rules § 4505.

**Section 5. Penalties for failure to report.** Every person required by this Local Law to report a case of sexual abuse or other unlawful conduct against minors who fails to do so shall be guilty of a class A misdemeanor.

**Section 6. Sunset.** This local law shall terminate upon the effective date of a law enacted by the New York State legislature that requires Clergy to report incidences of sexual victimization of minors.

**Section 7. Severability.** If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this local law directly involved in the controversy in which the judgment shall have been rendered.  
(Added by Local Law No. 5-2002, in effect May 29, 2002.)

## TITLE 51

### APPRENTICESHIP TRAINING PROGRAMS FOR COUNTY CONTRACTS

Section	1.	Legislative Intent.
	2.	Definitions.
	3.	Requirements and Exceptions.
	4.	Enforcement.
	5.	Severability.
	6.	Applicability

**1. Legislative intent and purpose.** The County of Nassau hereby establishes a policy to promote apprenticeship training as authorized by Section 816-b of the NEW YORK LABOR LAW.

**2. Definitions.** As used in this local law, the following terms shall have the meanings indicated:

A. "Construction contract" shall mean any contract to which the County of Nassau shall be a signatory which involves the construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition or otherwise providing for any building, facility of physical structure of any kind with a value in excess of \$500,000.

B. "Contractor or subcontractor" shall mean a contractor or subcontractor which directly employs labor under a construction contract for which an apprenticeship program has been approved by the New York State Commissioner of Labor in accordance with Article 23 of the NEW YORK LABOR LAW.

### **3. Requirements and Exceptions.**

A. The County of Nassau hereby requires any contractor, prior to entering into a construction contract with the County of Nassau, or any subcontractor entering into a contract with a contractor who has a construction contract with the County of Nassau, to have apprenticeship agreements appropriate for the type and scope of work to be performed, which have been registered with, and approved by the New York State Commissioner of Labor in accordance with Article 23 of the NEW YORK LABOR LAW, anything in Section 103 of the NEW YORK GENERAL MUNICIPAL LAW to the contrary notwithstanding.

B. A subcontractor who is entitled to receive less than \$100,000 from a construction contract is exempt from having an apprenticeship program.

**4. Enforcement.** The County Department of Public Works is hereby authorized, empowered and directed to promulgate such rules and regulations that are lawful, necessary and appropriate for the implementation and enforcement of any provisions of this local law.

**5. Severability.** If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this local law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

**6. Applicability.** This local law shall apply to construction contracts advertised for bids on or after the effective date.

(Added by Local Law No. 9-2002, in effect August 8, 2002.)

## **TITLE 52**

### **GOOD SPORTSMANSHIP OF PARTICIPANTS, THEIR PARENTS AND COACHES IN SPORTS AND RECREATIONAL ACTIVITIES ON NASSAU COUNTY PROPERTY.**

Section	1.	Legislative Intent.
	2.	Definitions.
	3.	Requirements.
	4.	Enforcement.
	5.	Severability.
	6.	Applicability.

**1. Legislative Intent and purpose.** The Legislature determines that it is important for the County to lead by example, by promoting good sportsmanship among all participants, their parents and coaches in sports and recreational activities on Nassau County property.

**2. Definitions.**

A). As used in this Local Law, the following terms shall have the meanings indicated: "Fair Play Agreement" is an agreement, to be developed by the Department of Parks and Recreations in accordance with the minimum standards set forth in the attachment hereto, that sets forth certain criteria to be followed by participants and their parents, to encourage good sportsmanship in sports and recreational activities on Nassau County property.

B). "Fair Play Coordinator" shall mean a volunteer who shall be selected by the organization, who shall attend at least one annual training session sponsored by the Nassau County Sports Commission, and shall be otherwise involved with Organizations who use Nassau County property.

C). "Organization" shall mean any partnership, corporation, joint venture, business, not-for-profit organization, nonprofit organization, community group, civic association, athletic league, society club, sports league group, or other organization which uses any Nassau County real property, whether owned, licensed or leased by the County of Nassau, for sports and recreational activities for youth (eighteen years old and younger) within the County of Nassau.

**3. Requirements.** The Fair Play Coordinator shall attend at least one annual training session sponsored by the Nassau County Sports Commission. One Fair Play Coordinator shall be assigned to each Organization that uses Nassau County property for sports or recreational activities.

A Fair Play Agreement shall be signed by each participant, and if the participant is under 17 years of age, also by their parent or legal guardian, that states that the signatories support the goal of good sportsmanship. Any participant who does not sign the agreement, and if the participant is under 17 years of age, whose parent or legal guardian also does not sign such agreement, shall not be permitted to participate in a sports or recreational activity that uses Nassau County property.

All coaches shall be urged to appoint a parent representative to attend all games. It is recommended that the parent representative shall have a suggestion form for the parents of participants to fill out to register any complaints regarding the sports or recreational activity which they are attending.

**4. Enforcement.** The County Department of Parks and Recreation is hereby authorized to promulgate such rules and regulations as are lawful, necessary and appropriate to implement the provisions of this law.

**5. Severability.** If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this local law, or in its application to the person individual, corporation, firm, partnership, entity, or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

6. **Applicability.** This law shall apply to any use of Nassau County owned, leased or licensed real property used for sports or recreational activities.  
(Added by Local Law No. 13-2002, in effect October 21, 2002.)

## TITLE 53

### PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN IN NASSAU COUNTY CONTRACTS

Section	101.	Definitions.
	102.	Office of Minority Affairs.
	103.	Equal employment opportunities for minority group members and women.
	104.	Contracting agency requirements.
	105.	Rules for utilization of subcontractors.
	106.	Disparity Study.
	107.	Countywide certification program.
	108.	Responsibilities of contracting agencies.
	109.	Enforcement.
	110.	Severability.

Section 101. **Definitions.** As used in this local law, the following terms shall have the following meanings:

1. "Certified business" shall mean a business verified as a minority or women owned business enterprise pursuant to section one hundred seven of this title.
2. "Contracting agency" shall mean a county agency which is party or proposed party to a county contract.
3. "Contractor" shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a county contract, or a bidder in conjunction with the award of a county contract or a proposed party to a county contract.
4. "County" shall mean Nassau County.
5. "County agency" shall mean
  - (a) any county department, or
  - (b) any division, board, commission or bureau of any county department, or
  - (c) Nassau Community College, or
  - (d) a board, a majority of whose members are appointed by the County Executive or who serve by virtue of being county officers or employees;
  - (e) Any of the following:
    - Assessment Review Commission
    - Civil Service Commission
    - Commissioner of Accounts
    - Comptroller
    - Consumer Affairs
    - Coordinating Agency for Spanish Americans
    - County Attorney
    - County Clerk

County Executive  
County Legislature  
Department of Assessment  
District Attorney  
Drug & Alcohol  
Fire Commission  
Health  
Human Resources  
Human Rights Commission  
IDA  
Medical Examiner  
Mental Health  
Minority Affairs  
Nassau Community College  
Office of Housing and Intergovernmental Affairs  
Office of Budget & Management  
Office of the Physically Challenged  
Planning  
Police Department.  
Probation  
Public Administrator  
Public Works  
Purchasing & Contracts  
Recreation Parks & Support Services  
Sheriff and Correction Officers  
Social Services  
Senior Citizen Affairs  
Traffic & Parking Violations  
Traffic Safety Board  
Treasurer Veterans Services Youth Board

6. "County contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be preformed for, or rendered or furnished to the contracting agency on the county's behalf; or (b) a written agreement in excess of one hundred thousand dollars whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. For the purpose of this section, the term "services" shall not include banking relationships, the issuance of insurance policies or contracts, or contracts with a contracting agency for the sale of bonds, notes or other securities.

7. "Director" shall mean the director of the Nassau County Office of Minority Affairs.

8. "Disparity study" shall mean a study of the utilization of minority and women-owned business enterprises as subcontractors on county contracts compared with the availability of such firms to perform such work. A disparity study shall separately assess

the availability and utilization of each minority group and of women-owned business enterprises and shall include an analysis of the data, including conclusions as to whether there has been utilization. A disparity study shall also include the gathering of anecdotal evidence of discrimination.

9. "Minority-owned business enterprise" shall mean a business enterprise including a sole proprietorship, partnership or corporation that is:

- (a) at least fifty-one percent owned by one or more minority group members; and
- (b) an enterprise in which such minority ownership is real, substantial and continuing; and
- (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day- to- day business decisions of the enterprise; and
- (d) an enterprise authorized to do business in this state and is independently owned and operated.

10. "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- (c) Native American or Alaskan native persons having origin in any of the original peoples of North America; or
- (d) Asian and Pacific Islander persons having origin in any of the Far East countries, South East Asia, the Indian subcontinent, or the Pacific Islands.

11. "Office" shall mean the Nassau County Office of Minority Affairs.

12. "Subcontract" shall mean an agreement providing for a total expenditure in excess of twenty-five thousand dollars for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for profit corporation, in which a portion of a contractor's obligation under a county contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property or improvements thereon for the beneficial use of the contractor.

13. "Utilization plan" shall mean a plan prepared by a contractor and submitted in connection with a proposed county contract. The utilization plan shall identify certified minority or women owned business enterprises, if known, that have committed to perform work in connection with the proposed county contract, as well as any such enterprises, if known, which the contractor intends to use in connection with the contractor's performance of the proposed county contract. The plan shall specifically contain a list, including the name, address and telephone number, of each certified enterprise with which the contractor intends to subcontract.



14. "Women owned business enterprise" shall mean a business enterprise, including sole proprietorship, partnership or corporation that is:

- (a) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women; and
- (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; and
- (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- (d) an enterprise authorized to do business in this state and is independently owned and operated.

**Section 102. Office of Minority Affairs.**

1. The Director may appoint such deputies, assistants, and other employees as may be needed for the performance of the duties prescribed herein subject to the provisions of the civil service law and the rules and regulations of the civil service commission, as well as the County Government Law of Nassau County, and the Nassau County Administrative Code. The director may request and shall receive from any department, division, board, bureau, commission or agency of the county such assistance as can be provided to carry out the provisions of this local law.

2. The Director shall have the following powers and duties:

- (a) to encourage and assist contracting agencies in their efforts to increase participation by minority and women-owned business enterprises on county contracts and subcontracts so as to facilitate the award of a fair share of such contracts to them;
- (b) to develop standardized forms and reporting documents necessary to implement this local law;
- (c) to conduct educational programs consistent with the purposes of this local law;
- (d) to review periodically the practices and procedures of contracting agencies with respect to compliance with the provisions of this local law, and to require them to file periodic reports;
- (e) on January first of each year report to the County Legislature on the activities of the office and efforts by contracting agencies to promote employment of minority group members and women, and to promote and increase participation by certified businesses with respect to county contracts and subcontracts so as to facilitate the award of a fair share of county contracts to such businesses. Such report may recommend new activities and programs to effectuate the purposes of this local law;
- (f) to prepare and update periodically a directory of certified minority and women-owned businesses enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades, and

- (g) to appoint independent hearing officers who by contract or terms of employment shall preside over adjudicatory hearings pursuant to this law for the office and who are assigned no other work by the office.

3. The Director may provide assistance to certified businesses as well as applicants to ensure that such businesses benefit, as needed, from technical, managerial and financial assistance and other business development programs. In addition, the Director, either independently or in conjunction with other county agencies shall:

- (a) develop a clearinghouse of information on programs and services provided by entities that may assist such businesses; and
- (b) review bonding and paperwork requirements imposed by contracting agencies that may unnecessarily impede the ability of such businesses to compete.

**Section 103. Equal employment opportunities for minority group members and women.**

1. All county contracts and all documents soliciting bids or proposals for county contracts shall contain or make reference to the following provisions:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this local law affirmative action shall mean recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff; or termination and rates of pay or other forms of compensation.
- (b) At the request of the contracting agency, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (c) The contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the county contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

2. The contractor will include the provisions of subdivision one of this section in every subcontract in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the county contract.

3. The provisions of this section shall not be binding upon contracting or subcontractors in the performance of work or the provision of services or any other

activity that are unrelated, separate, or distinct from the county contract as expressed by its terms.

4. In the implementation of this section, the contracting agency shall consider compliance by a contractor or subcontractor with the requirements of any federal and state law concerning equal employment opportunity which effectuates the purposes of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exist, the contracting agency shall waive the applicability of this section to the extent such duplication or conflict.

5. The requirements of this section shall not apply to any employment outside this county or application for employment outside this county or solicitations or advertisements therefore or any existing programs of affirmative action regarding employment outside this county and the effect of contract provisions required by subdivision one of this section shall be so limited.

#### **Section 104. Contracting agency requirements.**

1. The Director shall promulgate rules and regulations that provide measures and procedures to ensure that certified businesses shall be given the opportunity for meaningful participation in the performance of county contracts. Such rules shall require contracting agencies to identify those county contracts for which certified businesses are most likely to be available and may set forth additional requirements for outreach to minority businesses particularly with regard to such contracts. Nothing in the provisions of this local law shall be construed to limit the ability of any certified business to bid on any contract.

2. Contracting agencies shall include or require to be included with respect to county contracts for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, requests for proposals ("RFP"), and any other applicable county contracts, such provisions as may be necessary to effectuate the provisions of this local law including, but not limited to: (a) provisions requiring contractors to make its best efforts to solicit active participation by enterprises identified in the directory of certified businesses provided to the contracting agency by the office; and (b) requiring the parties to agree as a condition of entering into such contract, to be bound by the provisions of section one hundred nine of this local law. Provided, however, that no such provisions shall be binding upon contractors or in the performance of work or the provision of services that are unrelated, separate or distinct from the county contract as expressed by its terms, and nothing in this section shall authorize the Director or any contracting agency to impose any requirement on a contractor except with respect to a county contract.

3. In the implementation of this section, the contracting agency shall consider compliance with the requirements of any federal or state law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of any such law duplicate or conflict with the provisions hereof and if such duplication or conflict exists, the contracting agency may waive the applicability of this local law to the extent of such duplication or conflict.

#### **Section 105. Rules for utilization of subcontractors.**

1. The Director shall promulgate rules and regulations requiring that all contractors use best efforts to achieve participation in subcontracting by minority-owned business enterprises and women-owned business enterprises in accordance with percentages set by the Director to reflect the percentage of minority and women-owned businesses available to perform such work. Such percentages shall be based on the findings and conclusions of the disparity study.

2. Contracting agencies shall administer the rules and regulations promulgated by the Director to ensure compliance with the provisions of this section. Such rules and regulations shall require a contractor to submit a utilization plan after bids are opened, when bids are required; or in a contractor's response to a RFP; but in all cases prior to the award of a county contract, shall require the contracting agency to review the utilization plan submitted by the contractor within a reasonable period of time as established by the Director; shall require the contracting agency to notify the contractor in writing within a period of time specified by the Director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the Director; may require the contractor to submit periodic compliance reports relating to the operation and implementation of any utilization plan; shall allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions five and six of this section; shall allow a contractor to file a complaint with the Director pursuant to subdivision seven of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprises participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the Director in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the county contract where no waiver has been granted.

3. The rules and regulations promulgated pursuant to this subdivision regarding a utilization plan shall provide that where enterprises have been identified within a utilization plan, a contractor shall make its best efforts to utilize such enterprise at least to the extent indicated. A contracting agency may require a contractor to indicate within a utilization plan, what measures and procedures he or she intends to take to comply with the provisions of this local law, but may not require, as a condition of award of, or compliance with, a contract that a contractor utilize a particular enterprise in performance of the contract.

4. Without limiting other grounds for the disqualification of bids or proposals on the basis of non-responsibility, a contracting agency may disqualify the bid or proposal of a contractor as being non-responsible for failure to remedy notified deficiencies in the contractor's utilization plan within a period of time specified in regulations promulgated by the Director after receiving notification of such deficiencies from the contracting agency. Where failure to remedy any notified deficiency in the utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting agency. Where the contracting agency states that a failure to remedy any notified deficiency in the utilization plan is a ground for disqualification the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the contracting agency. Such hearing shall be conducted by the appropriate authority of the contracting agency to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in accordance with law.

5. Where it appears that a contractor, after making its best efforts, cannot comply with the minority and women-owned business enterprise participation requirements set forth in a particular county contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises located in the county, the total dollar value of the county contract, the scope of work to be performed and the project size and term. If based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the county and shall thereafter consider the financial ability of minority and women-owned businesses located in the county to perform the county contract.

6. For purposes of determining if a contractor has made its best efforts to comply with the requirements of this section or to be entitled to a waiver, the contracting agency shall consider:

- a. whether the contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,
  - i. whether or not certified minority or women-owned businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
  - ii. whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and
- b. whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision two of section one hundred two of this local law; and
- c. whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

7. In the event that a contracting agency fails or refuses to issue a waiver to a contractor as requested within twenty days after having made application therefore pursuant to subdivision five of this section or if the contracting agency denies such application, in whole or in part, the contractor may file a complaint with the Director pursuant to section one hundred nine of this local law setting forth the facts and circumstances giving rise to the contractor's complaint together with a demand for relief. The contractor shall serve a copy of such complaint upon the contracting agency by

personal service or by certified mail, return receipt requested. The contracting agency shall be afforded an opportunity to respond to such in writing.

8. If, after the review of a contractor's minority and women-owned business utilization plan or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the contracting agency in connection therewith, it appears that a contractor is failing or refusing to comply with the minority and women-owned business participation requirements as set forth in the county contract and where no waiver from such requirements has been granted, the contracting agency may file a written complaint with the Director pursuant to section one hundred nine of this local law setting forth the facts and circumstances giving rise to the contracting agency's complaint together with a demand for relief. The contracting agency shall serve a copy of such complaint upon the contractor by personal service or by certified mail, return receipt requested. The contractor shall be afforded an opportunity to respond to such complaint in writing.

Section 106. **Disparity Study.** The County shall enter into a contract for a disparity study to be completed prior to February 1, 2003.

Section 107. **Countywide certification program.**

1. The Director shall promulgate rules and regulations providing for the establishment of a countywide certification program including rules and regulations governing the approval, denial or revocation of any such certification. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in section seventy-three of the civil rights law.

2. For the purposes of this local law, the office shall be responsible for verifying businesses as being owned, operated, and controlled by minority group members or women and for certifying such verified businesses. The Director shall prepare a directory of certified business for use by contracting agencies and contractors in carrying out the provisions of this article. The Director shall periodically update the directory.

3. Following application for certification pursuant to this section, the Director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within thirty days. Within sixty days of submission of a final completed application, the Director shall provide the applicant with written notice of a determination by the office approving or denying such certification and, in the event of a denial a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the Director. In the event that a request for a hearing is not made within such thirty-day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the Director to affirm, reverse or modify such determination of the Director. Such written recommendation shall be issued to the parties. The Director, within thirty days shall, by order, accept, reject or modify such recommendation of the hearing officer and set forth in writing the reasons therefor. The Director shall serve a copy of such order and reasons therefore upon the business enterprise by personal service or by certified mail return receipt requested.

## Section 108. **Responsibilities of contracting agencies.**

1. Each contracting agency shall be responsible for monitoring county contracts under its jurisdiction, and recommending matters to the office respecting non-compliance with the provisions of this local law so that the office may take such action as is appropriate to insure compliance with the provisions of this local law, the rules and regulations of the Director issued hereunder and contractual provisions required of this local law, the rules and regulations of the Director issued hereunder and the contractual provisions required pursuant to this local law. All contracting agencies shall comply with the rules and regulations of the office and are directed to cooperate with the office and to furnish to the office such information and assistance as may be required in the performance of its functions under this local law.
2. Each contracting agency shall provide to prospective bidders a current copy of the directory of certified businesses, and a copy of the regulations required pursuant to sections one hundred three and one hundred four of this local law at the time bids or proposals are solicited.
3. Each contracting agency shall report to the Director with respect to activities undertaken to promote employment of minority group members and women and promote and increase participation by certified businesses with respect to county contracts and subcontracts. Such reports shall be submitted periodically as required by the Director.

Section 109. **Enforcement.** Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a county contract which have been included to comply with the provisions of this local law or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision five of section one hundred five of this local law or has denied such application, the Director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Director shall refer the matter, within thirty days of the receipt of the complaint, to the American Arbitration Association for proceeding thereon. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Director his or her award regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The Director shall either: (a) adopt the recommendation of the arbitrator; or (b) determine that no sanctions, fines or penalties should be imposed; or (c) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Director, within ten days of receipt of the arbitrator's award and recommendations, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this local law to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator shall be final and may only be vacated or modified as provided in the civil practice law and rules. The determination of the Director as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to the civil practice law and rules.

Section 110. **Severability.** If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this local law directly involved in the controversy in which the judgment shall have been rendered.

(Added by Local Law No. 14-2002, in effect October 9, 2002.\*)

\*(Note- Section 2 of L.L. No. 14-2002 provides: This local law shall take effect immediately; provided that section 105 of Title 53, as added by Section 1 of this law, shall take effect on April 1, 2003 contingent on a disparity study, as required by this law, being completed prior to that date, which study demonstrates that there is underutilization of minority and/or women-owned business enterprises on County subcontracts as a result of discriminatory practices or a discriminatory system in which the County has participated. The Office of Minority Affairs shall receive and review such disparity study and shall file a report with the County Legislature prior to April 1, 2003.)

## TITLE 54

### LEAVE ALLOWED BY COUNTY TO EMPLOYEES FOR ORGAN OR BONE MARROW DONATION

#### 1. Allowable Leave

Subject to negotiation to the extent required by law, an employee of Nassau County shall be allowed up to (7) seven days paid leave to undergo a medical procedure to donate bone marrow and up to (30) thirty days paid leave to serve as an organ donor, provided, that the employee shall provide his or her direct supervisor with not less than fourteen days prior written notice of an intention to utilize such leave, unless there exists a medical emergency, attested to by a physician, which would require the employee to participate in the medical procedure or organ donation within the fourteen day notification period. Such leave shall be in addition to any other sick or annual leave allowed, and any other leave granted by law. The County may require verification of the donation from a physician before the employee is credited with the applicable leave.

#### 2. Employee Defined

An "employee" for purposes of this Title is a person who performs services for hire for Nassau County, for an average of twenty or more hours per week, but shall not include an independent contractor.

(Added by Local Law No. 9-2003, in effect June 12, 2003.)

## TITLE 55

### PROHIBITION AGAINST THE SALE OF LIGHTERS, MATCHES AND LIGHTER FLUID TO MINORS

1. **Legislative Intent.** The Nassau County Legislature finds that lighters, matches and lighter fluid ("lighter devices") pose a serious health risk to our children and property when these devices are obtained and used by minors. The unregulated sale and dispensing of lighter devices may cause serious injury to our county residents and their property. As such, the Legislature finds that the sale of lighter devices should not be sold to those under the age of eighteen (18) years. The Legislature hereby enacts this law in furtherance of its responsibility to protect the health and welfare of its residents.



## 2. Definitions.

A. "Lighters" mean cigarette and cigar lighters, pocket lighters, butane lighters, pen lighters, flint lighters and any other mechanical device in which its main purpose is for igniting an object.

B. "Match" or "matches" means a narrow strip of wood, cardboard or wax, coated on one end with a compound that ignites by friction.

C. "Lighter fluid" means a fluid designed to cause an object to be ignited more easily, generally containing butane or naphtha. Lighter fluid shall not include gasoline.

3. **Sale of Lighters, Matches and Lighter Fluid.** No person shall sell or cause to be sold a lighter, matches or lighter fluid to a person under the age of eighteen (18) years of age.

4. **Penalties.** Any person who violates section three of this Title shall be guilty of a violation punishable by a fine not to exceed \$250.

5. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstances directly involved in the controversy in which such judgment or order shall be rendered.

(Added by Local Law No. 13-2003.)

## TITLE 56

### COLLECTIVE BARGAINING ACTIVITIES OF UNIONS IN NASSAU COUNTY

§ 1. **Legislative Intent.** This Legislature hereby finds and determines that funds appropriated by the County Legislature for the purchase of necessary goods and services should ultimately be expended solely for the purpose for which they were appropriated and should not be used to deter, or promote union organizing.

This Legislature also finds that the use of County funds and property to assist, deter or promote union organizing causes conflicts and work interruptions which waste scarce County resources on issues of secondary importance.

This Legislature further finds and determines that where the County expends significant resources for the purchase of goods or the delivery of needed human services, the County's financial interests is advanced by the promotion of non-confrontational procedures which limit the economic and social disruptions associated with collective bargaining disputes.

This Legislature also determines that the State of New York has recently enacted amendments to the New York Finance Law to restrict the use of State funds in assisting, deterring or promoting union organizing.

Therefore, the purpose of this law is to protect the County's financial interests in connection with its commitment of economic resources by prohibiting funding of certain forms of labor/management conflict and is not intended to provide an advantage to either labor or management during the conduct of union organization campaigns, nor to express any generally applicable policy regarding labor/management relations.

§ 2. **Definitions.** As used in this law, the following terms shall have the meanings indicated:

A.) "Assist, Promote or Deter Union Organizing" shall mean any attempt by an employer to influence the decision of its employees in the County of Nassau or those of its subcontractors regarding either of the following:

- 1.) whether to support or oppose a labor organization that represents or seeks to represent those employees; and
- 2.) whether to become a member of any labor organization.

B.) "Binding Arbitration Agreements" shall mean a written agreement to submit any dispute arising out of the efforts of a labor organization to represent the employees of a County contractor to final and binding arbitration.

C.) "County Contractor" shall mean any employer that receives more than Fifty Thousand (\$50,000) Dollars in County funds for supplying goods or services pursuant to a written contract with the County of Nassau or any of its agencies; pursuant to a Nassau County grant; pursuant to a Nassau County program; pursuant to a Nassau County reimbursement for services provided in any calendar year; or pursuant to a sub-contract with any of the above.

D.) "County Funds" shall mean any monies- appropriated by the Nassau County Legislature.

E.) "County Property" shall mean any property or facility owned or leased to or by the County of Nassau or any Nassau County agency or authority.

F.) "Employee" shall mean any person employed by an employer other than a person employed in a supervisory, managerial or confidential position as defined by applicable law.

G.) "Employer" shall mean any individual, corporation, unincorporated association, partnership, government agency or authority, or another legal entity, whether a for profit entity, a not-for-profit entity or a public entity that employs more than one person in the County of Nassau.

H.) "Fair Communication Agreements" shall mean a written agreement requiring the parties to such agreement to refrain from providing employees with false and misleading information regarding the circumstances surrounding their employment.

I.) "Human Services Contract" shall mean a County contract, grant or reimbursement of over Fifty Thousand (\$50,000) Dollars for the provision of health, mental health, residential or day treatment services to the mentally ill and developmentally disabled, social services and other care and treatment services of the County.

J.) "Labor Disputes" shall mean any concerted action concerning wages, hours and conditions of employment or concerning the representation of person in negotiating, maintaining changing or seeking to arrange wages, hours and conditions of employment.

K.) "Labor Organization" shall mean an organization of any kind in which employees participate and which exists for the purpose, in whole or in part, or representing employees concerning wages, rates for pay, benefit, grievances, labor disputes, hours of employment, working conditions or other matters incidental to the employment relationship, and shall include the parent, national or international organization of a local labor organization.

L.) "Majority Authorization Card Agreement" shall mean a written agreement authorizing the recognition of a labor organization as the exclusive bargaining agent for a bargaining unit based on the presentation of a majority of authorizing cards.

M.) "Neutrality Agreement" shall mean a written agreement by a County contractor not to participate in or request or otherwise seek to influence, either in writing or orally, the decision of its employees as to whether or not to be represented by a labor organization.

N.) "Non-intimidation Agreements" shall mean a written agreement prohibiting the parties from coercing or intimidating employees explicitly or implicitly in selecting or not selecting a bargaining representative.

O.) "Reasonable Access Agreement" shall mean a written agreement granting a labor organization reasonable access to employees and information necessary to be communicated therewith.

### § 3. **Prohibitions.**

A.) A County contractor shall not use any of County funds to assist, promote or deter union organizing.

B.) No County funds shall be used to reimburse a County contractor for any costs incurred to assist, promote or deter union organizing.

C.) The County of Nassau shall not use County funds to assist, promote or deter union organizing.

D.) All County contracts, grant applications, program guidelines and any other relevant documents shall contain the text of the prohibitions in this section.

E.) No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote or deter union organizing.

F.) Prior to the award of a County contract or grant, and/or prior to authorization to participate in a County program, the potential awardee, recipient, and or program participant, as the case may be, shall provide a certification, subscribed by such awardee, recipient and or program participant and affirmed by said person as true under the penalties of perjury to the County agency or authority involved that none of the funds shall be used to assist, promote or deter union organizing.

G.) Every request for payment of County funds by a County contractor shall include a certification, subscribed to by such person seeking reimbursement and affirmed by said person as true under the penalties of perjury, that the contractor is not seeking reimbursement for costs incurred to assist, promote or deter union organizing.

H.) Every County Department, Agency, Authority or Office shall require those seeking County contracts, grants, awards, program participation and for County reimbursement to certify and affirm as true under the penalty of perjury that such entities will take all action necessary to ensure that County funds are not used to assist, promote or deter union organizing.

I.) Any County contractor who makes expenditures or incurs costs to assist, promote or deter union organizing shall maintain records sufficient to show that no County funds were used for those expenditures and, as applicable, that no reimbursement from County funds has been sought for such costs. Such records shall be made available to the pertinent County agency or authority, the County Comptroller, or the County Attorney, upon request.

§ 4. **Accounting.** Each County contractor shall account for funds spent on assisting, deterring or promoting union organizing activities as follows:

A. County funds designated by the County for use for a specific expenditure of the recipient shall be accounted for as allocated to the expenditure.

B. County funds that are not designated as described in paragraph (A) of this section shall be allocated on a pro rata basis to all expenditures by the recipient that support the program for which the grant is awarded.

C. If County funds and other funds are commingled, and the contractor fails to keep records sufficient to satisfy the requirements of paragraphs (A) or (B) of this section, any expenditure to assist, promote or deter union organizing shall be allocated between the County funds and other funds on the pro rata basis derived from the interplay of paragraphs (A) and (B) of this section.

D. Any expense, including legal and consulting fees and salaries of supervisor and employees, incurred for research for, or preparation, planning or coordination of, carrying out, an activity to assist, promote or deter union organizing shall be treated as paid or incurred for that activity.

#### **§ 5. Applicability.**

A. This law shall apply to any contracts awarded on or after the effective date of this law.

B. This law shall not apply to an activity performed or to an expense incurred in connection with any of the following:

- 1.) addressing a grievance or negotiating or administering a collective bargaining agreement;
- 2.) allowing a labor organization or its representative's access to the employer's facility or property;
- 3.) performing an activity required by Federal or State law or by a collective bargaining agreement; and
- 4.) negotiating, entering into or carrying out a voluntary recognition agreement with a labor organization.

**§ 6. Implementation.** Every Nassau County Department, Agency; Authority or Office shall:

1.) Include in all bid documents, County grant applications, County program guidelines and County reimbursement documents, a statement informing potential and actual County contractors that the efficient, timely and non-disruptive provision of goods and services sought by such Department, Agency, Authority or Office is a paramount financial interest of the County of Nassau and as such the County expects the potential County contractor to protect the County's financial interest by adopting non-confrontational procedures for the orderly resolution of labor disputes. The statement shall also inform the potential and actual County contractors that such non-confrontational procedures may include, but are not limited to, neutrality agreements, majority authorization card agreements, binding arbitration agreements, fair communication agreements, non-intimidation agreements and reasonable access agreements.

2.) Require County contractors and those seeking County contracts, to certify and affirm as true under the penalty of perjury:

- a.) that such contractor will not express to employees any false or misleading information that is intended to influence the determination of employee preferences regarding union representation;
- b.) that such contractor will not coerce or intimidate employees, explicitly or implicitly, in selecting or not selecting a bargaining representative;

- c.) that such contractor will not require an employee, individually or in a group, to attend a meeting or an event that is intended to influence his or her decision in selecting or not selecting a bargaining representative;
- d.) that such contractor understands its obligation to limit disruptions caused by pre-recognition labor disputes through the adoption of non-confrontational procedures for the resolution of pre-recognition labor disputes with employees engaged in the production of goods or the rendering of services for the County; and
- e.) that such contractor has and will adopt any or all of the above-referenced procedures, or their functional equivalent, to ensure the efficient, timely and quality provision of goods and services to the County. The contractor shall include a list of said procedures in such certification.

3.) Ensure that every County contract for the provision of services, when such services will be performed on County property, include as a condition of award, grant receipt or reimbursement, as the case may be, a requirement that such County contractor adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

4.) Ensure that every County contract for the provision of human services, when such services are not to be performed on County property, include as a condition of award, grant receipt or reimbursement, as the case may be, a requirement that such County contractor adopt, at the least, a neutrality agreement.

#### **§ 7. Penalties.**

A.) A County contractor who expends funds and/or obtains reimbursement for funds spent in violation in Section 3 or 4 of this law shall be liable for any funds so expended plus a civil penalty equal to twice the amount of those funds. Such penalty shall not be paid by the contractor from any other County funds. In addition, said County contractor shall be prohibited from bidding on County contracts for a period of five (5) years from the final determination of a violation, either by administrative action or judicial action.

B.) An employer that violates Section 3 of this law, shall also be liable for a civil penalty equal to One Thousand (\$1,000) Dollars per employee per meeting. Such penalty shall not be paid by the employer from any other County funds.

C.) Any public official who knowingly authorizes the use of County funds in violation of Section 3 of this law, shall be liable to the County for those funds.

#### **Section 8. Enforcement.**

A.) A civil action for a violation of this law may be brought by the County Attorney's office for injunctive relief, damages, civil penalties and other appropriate equitable relief.

B.) All damages and civil penalties collected pursuant to this law shall be paid to the general fund of the county;

C.) Any Labor Organization may file a complaint with the Nassau County Department of Labor or the Nassau County Attorney's office alleging violations of this law. Said complaint shall be promptly investigated and a written response shall be issued to the complaining Labor Organization.

§ 9. **Rules and Regulations.** The Department of Labor shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provision of this law.

§ 10. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

(Added by Local Law No. 19-2003, in effect March 1, 2004.)

## TITLE 57

### NASSAU COUNTY LIVING WAGE LAW

#### Section 1. Short title

This law shall be known as the Nassau County Living Wage Law, which shall appear in the miscellaneous laws as title 57.

#### § 2. Definitions

For purposes of this law, the following terms shall have the following meanings:

“Benefits” means payment by an entity subject to the provisions of this law to its employees or on their behalf of an amount no less than one dollar and fifty cents per hour worked towards the provision of health benefits or child care benefits for employees and/or their dependents.

“Benefits supplement rate” means one dollar and fifty cents per hour, which may be paid to an employee in lieu of benefits. Such supplement rate shall be upwardly adjusted in proportion to any increase during the preceding twelve months of the consumer price index for medical care for the New York-Northern New Jersey-Long Island metropolitan statistical area.

“Building services” means any work providing custodial, janitorial, grounds-keeping, or security guard services.

“Building services employee” means an employee of an entity performing building services.

“Child care” means care for a child on a regular basis provided away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child.

“County” means the county of Nassau.

“County service contract” means (1) a contract let to a contractor by the county for the furnishing of services to or for the county and that involves an expenditure equal to or greater than twenty-five thousand dollars, except contracts where services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other personal property is not a “service contract” for the purposes of this definition. This definition shall not include contracts awarded pursuant to the county’s emergency procurement procedure as set forth in section twenty-two hundred six of the county charter. This definition shall not include intermunicipal agreements.

"County contractor" means any entity or person that enters into a county service contract with the county.

"County financial assistance" shall mean any grant, loan, tax incentive or abatement, bond financing, subsidy or other form of assistance of more than fifty thousand dollars which is realized by or provided to an entity having at least ten employees by or through the authority or approval of the county. For purposes of this law, county financial assistance shall not include industrial development bonds, community development block grant loans, and enterprise-zone-related incentives.

"County financial assistance recipient," or "CFAR" means any entity that receives financial assistance from the county. In addition, any tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who employs at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using such property, shall be considered a CFAR for the purposes of this chapter and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

"County lease" means any lease, concession agreement, or other agreement authorizing any party to occupy, use, control or do business at property owned or controlled by the county.

"County lessee" means any entity leasing property from the county pursuant to a county lease.

"County subcontractor" means any entity or person that is engaged by a county contractor to assist in performing any of the services to be rendered pursuant to a county service contract. This definition does not include any entity that merely provides goods relating to a county service contract or that provides services of a general nature (such as relating to general office operations) to a county service contractor which do not relate directly to performing the services to be rendered pursuant to the county service contract. An entity shall be deemed a county subcontractor for the duration of the period during which it assists a county contractor in performing the county service contract.

"Employee" means any person who is employed at least twenty hours per week (1) as a service employee of a contractor or subcontractor pursuant to one or more service contracts and who expends any of his or her time thereon. Such employees shall include but not be limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; (2) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of county financial assistance; (3) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property which is the subject of county financial assistance; or (4) as a service employee of a county lessee. Any person who is a managerial, supervisory or professional employee shall not be considered an employee for purposes of this definition.

"Employer" means the county and any entity or person who is a CFAR, county contractor or subcontractor, or county lessee, except that Nassau Community College shall not be considered an employer for purposes of this law.

"Entity" or "person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

"Intermunicipal agreement" means any agreement or contract between the county and a) any municipal corporation located in the county; b) any school district located in the county; or c) any special district located in the county.

"Living wage" means an hourly wage rate of twelve dollars and fifty cents (\$12.50) per hour phased in as provided below; provided, however, that for homecare services under the

personal care services program, the wage rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this law:

(1) from the effective date of this law through the thirty-first day of July, two thousand eight, nine dollars and fifty cents per hour;

(2) from the first day of August, two thousand eight, through the thirty-first day of July, two thousand nine, ten dollars and fifty cents per hour;

(3) from the first day of August, two thousand nine, through the thirty-first day of July, two thousand ten, eleven dollars and fifty cents per hour;

(4) from the first day of August, two thousand ten, and through the thirty-first day of July, two thousand eleven, twelve dollars and fifty cents per hour.

Beginning on the first day of August, two thousand eleven, and on the first day of August every year thereafter, the living wage shall be adjusted upward by a percentage equal to the change in the New York Metropolitan Area All Urban Index (NY CPI-U) as promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor (CPI) for the period of June of the preceding year to June of the current year. In no event shall such wage increase be greater than three and one-half percent.

### §3. Minimum Compensation

#### a. Wages

Employers shall pay their employees no less than the living wage and either provide them benefits or supplement their hourly wage rate by an amount no less than the health benefits supplement rate; provided, however, that employers who provide building services shall pay their employees no less than the living wage, as required by this section, or the prevailing wage, whichever is greater; and provided further that where an employee is covered by a bona fide collective bargaining agreement which provides benefits, his or her employer shall not be required to provide benefits pursuant to this subdivision.

#### b. Compensated days off

Employers shall provide their employees no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee's request. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees. Any employee shall be eligible to begin using such accrued leave six months following his or her start date of employment, or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve compensated days off.

#### c. Exemption for minors and employment programs, the disabled, child care

This law shall not apply to:

1) any employee who is:

(A) under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or

(B) employed as a trainee in a bona fide training program consistent with federal and state law where the training program has the goal that the employee advances into a permanent position; provided, however, that this exemption shall apply only when the trainee does not replace, displace or lower the wages or benefits of any employee, and the training does not exceed two years; and

2) any disabled employee, where such disabled employee:

(A) is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or

(B) would be covered by such a certificate but for the fact that the employer is paying a wage



equal to or higher than the federal minimum wage.

3) any county service contract or county financial assistance in relation to the furnishing of child care services.

4) any county service contract or county financial assistance where the application of this law in a particular case would violate any specific state or federal statutory, regulatory, or constitutional provision.

d. No effect on county wage pattern

Nothing in this law shall be construed to establish a wage or benefit pattern for county employees.

#### § 4. Duration

a. For CFARs, assistance given by the county in an amount equal to or greater than fifty thousand dollars in any twelve month period shall require compliance with this chapter for the life of the contract in the case of assistance given to fund a program, or for five years in the case of assistance given for the purchase of real property or personal property to construct facilities, including but not limited to materials, equipment, fixtures, merchandise, and machinery.

b. A service contractor and subcontractor shall be required to comply with this chapter for the term of the county service contract.

#### § 5. Obligations of Employers

a. Certification of Compliance. 1) Prior to the award of a county service contract, county financial assistance or county lease, any employer seeking such contract, financial assistance or lease shall provide the county with a certification containing the following information:

(A) the name, address, and telephone number of the chief executive officer of the employer;

(B) a statement that, if the county service contract, county financial assistance or county lease is awarded, the employer agrees to comply with the requirements of this law, and with all applicable federal, state and local laws;

(C) the following workforce information concerning the employees that will be covered by this law: (i) the number of the entity's employees covered by this law; (ii) for all categories of such employees, the following information broken down by category: 1) job classifications of employees in each category; and 2) the wages and benefits provided employees in each category (including a description of benefits and compensated days off).

(D) a record of any instances during the preceding five years in which the employer has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or where any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and

(2) A county contractor shall each year throughout the term of the county service contract submit to the county an updated certification whenever there have been material changes to information contained in the current certification.

b. Payroll records

Every employer shall maintain original payroll records for each of its employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of this law, and the wages paid and benefits provided for such hours worked, for a period of four years after completion of the term of the county service contract or receipt of county financial assistance.

c. Duty to county subcontractors

An employer shall ensure that its subcontractors comply with the requirements of this law, and shall provide written notification to them of those requirements, and include in any contract or agreement with such subcontractors a provision requiring them to comply with those requirements.

#### § 6. Implementation by county

a. The county shall comply with and enforce the requirements of this law, which shall be a term and condition of any county service contract, county financial assistance or county lease. The county shall not expend county funds in connection with any county service contract, county financial assistance, or county lease in contravention of the provisions of this law.

b. Every county service contract, county financial assistance agreement, or county lease shall have annexed to it the following materials which shall form a part of the specifications for and terms of such contract or agreement:

(A) a provision obligating the employer to comply with all applicable requirements under this law, as well as a provision providing that: (i) failure to comply with the requirements of this law may constitute a material breach by the employer; (ii) such failure shall be determined by the county; and (iii) if, within thirty days after such employer receives written notice of such a breach, the employer fails to cure such breach, the county shall have the right to pursue any rights or remedies available under the terms of such county service contract, county financial assistance, or county lease or under applicable law, including termination of such contract or assistance;

(B) the certification required under subdivision a of section five of this law; and

(C) a schedule of the current living wage and health benefits supplement rates, a schedule of job classifications for which payment of the prevailing wage is required under this law together with the applicable prevailing wage rates for each job classification, and notice that such rates are adjusted annually.

#### § 7. Monitoring and enforcement

a. The comptroller shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.

b. The county executive or his or her designee may promulgate rules to implement the provisions of this law and may delegate such authority to the comptroller.

c. The comptroller shall submit an annual report to the county executive and the county legislature summarizing and assessing the implementation of and compliance with this law during the preceding year.

d. Where an employer has been determined to have violated any provision of this title, such employer shall be given written notice thereof by the county. If, within thirty days after such employer receives such notice, he or she fails to cure such breach, the county shall have the right to pursue any rights or remedies available under the terms of its contract or CFAR agreement with such employer, or under applicable law, including, but not limited to:

- (i) suspension and termination of such contract or financial assistance;
- (ii) payback of any or all of the contract or financial assistance awarded by the county;
- (iii) declare the employer ineligible for future county service contracts, county financial assistance and county leases until all penalties and restitution have been paid in full;
- (iv) a fine payable to the county of Nassau in the amount of \$500 for each week for each employee found not to have been paid in accordance with this title;
- (v) wage restitution for each such employee.

#### § 8. Private Right of Action

a. An employee may, in addition to any other remedy provided by this law, institute an action in any court of competent jurisdiction against the employer alleged to have violated this law. For failure to pay wages or provide benefits required under this law, such court may award any of the remedies provided under section one hundred ninety eight of the New York state labor law. For failure to comply with other requirements of this law, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity, including but not limited to back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, reinstatement, injunctive relief and/or compensatory damages. The court shall award reasonable attorney's fees and costs to any complaining party who prevails

in any such enforcement action.

b. Notwithstanding any inconsistent provision of this law or of any other general, special or local law, ordinance, county charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this law because of the prior receipt by the employee without protest of wages or benefits paid, or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages or benefits received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages or benefits due the employee for the period covered by such payment.

c. An action pursuant to this section must be commenced within three years of the date of the alleged violation, or within three years of the final disposition of any administrative complaint or action concerning the alleged violation or, if such a disposition is reviewed in a proceeding pursuant to article seventy-eight of the New York state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this law is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This law shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

d. This section shall not be construed to authorize an action against the county or any of its officers or employees relating to either the enforcement or implementation of this title.

#### § 9. Waiver

Any county contractor may request a waiver of the requirements of this law by submitting an application therefor to the county executive, or his or her designee, who shall establish such rules, regulations, procedures and forms as he or she may deem necessary to carry out the provisions of this section, as well as the eligibility criteria for such waiver, which shall include, but not be limited to the following:

a. The highest paid officer or employee of such contractor earns a salary which, when calculated on an hourly basis, is less than six times the lowest wage or salary paid by the contractor; or

b. Compliance with the requirements of this law will directly increase a contractor's expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget.

#### § 10. Other provisions

a. Except where expressly provided otherwise in this law, the requirements of this law shall apply to county service contracts and county leases entered into, and county financial assistance awarded after the effective date of this law, and shall not apply to any existing county service contract or county lease entered into or county financial assistance awarded prior to that date. Where a county service contract, a county lease or county financial assistance is renewed or extended after the effective date of this law, such renewal or extension shall be deemed a new county service contract, a new county lease, or new county financial assistance, as the case may be, subject to the requirements of this law, as applicable.

b. Nothing in this law shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement that mandates the provision of higher or superior wages, benefits, or protections to covered employees. No requirement or provision of this law shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those specific applications or provisions of this law for which coverage would be pre-empted shall be construed as not applying.

c. The requirements of this law may be waived by the written terms of a bona fide collective bargaining agreement, provided that this local law is expressly referenced in the agreement, and that the agreement sets forth in clear and unambiguous terms the desire of all parties to waive some or all of the requirements of this local law. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of any of the requirements of this Section.

d. Not-for-profit corporations shall be eligible for financial assistance from the Nassau County Living Wage Contingency Fund, or any successor fund thereto, in order to meet increased payroll expenses incurred due the operation of this law, upon filing a request for such assistance with the county executive or his or her designee, who shall establish such rules, regulations, procedures and forms as he or she may deem necessary to carry out the provisions of this subdivision.

#### § 11. Retaliation and Discrimination Barred

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of this law, or who seeks or communicates information regarding rights conferred by this law in circumstances where he or she in good faith believes this law applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates this subsection may pursue administrative remedies or bring a civil action pursuant to section 5 of this law in a court of competent jurisdiction.

#### § 12. Protection against displacement of building services workers

a. It is the purpose of this provision to ensure continuity in living wage employment for building services employees and minimize disruption when building services that were previously performed by employees of an entity subject to the provisions of this title are continued by a new entity.

b. In the event that an employer that provides building services sells, transfers, assigns, or otherwise conveys its interest in county real property, the county shall require any subsequent employer assuming such interest to retain and employ such building service employees as were employed by the original county contractor.

#### § 13. Severability

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

#### § 14. Effective date. This local law shall take effect January 1, 2007.

(Added by Local Law No. 1-2006, passed by the Legislature on Dec. 19, 2005 and signed by the County Executive on January 16, 2006.)

## TITLE 58

### NASSAU COUNTY BB GUN LAW

#### Section 1. Short title

This law shall be known as the Nassau County BB Gun Law, which shall appear in the miscellaneous laws as title 58.

#### Section 2. Legislative Intent

This Legislature finds that air guns, including but not limited to, BB guns and pellet guns, threaten the health, safety and well-being of the residents of Nassau County when they are obtained and used by minors. These guns can kill a person. High velocity guns can increase the risk. The U.S. Consumer Product Safety Commission ("CPSC") has reports of approximately four deaths per year caused by BB guns or pellet rifles. Studies have shown that , at close range, BBs and pellets fired from these air powered guns can cause tissue damage and potentially severe penetrating injuries especially those to the abdomen, chest, eye and head of children. Recently, two Long Island youngsters were hospitalized after being shot, in the eye and abdomen respectively, by BB gun pellets wielded by minors. There has also been a series of recent incidents in the County involving multiple car windows being shot out with BB guns. There are no federal laws regulating the transfer, possession or use of air guns. This title protects the public safety by establishing safeguards to control the sale of these products to individuals under the age of eighteen. This legislature finds that by controlling the sale of these products to such individuals, severe or lethal injuries can be significantly reduced.

#### Section 3. Definitions

As used in this title:

- a. "Person" shall mean a person, firm, company, corporation, partnership, sole proprietor, limited partnership, limited liability partnership, limited liability corporation or association.
- b. "Air guns" shall mean any air rifle, air pistol, spring gun, spring pistol, B-B gun, paint ball gun, pellet gun or any implement, instrument or weapon that is not a firearm, which propels ammunition in the form of a pellet constructed of hard steel, lead, plastic, elastic containing paint or ceramic or other hard materials with a force that is reasonably expected to cause bodily harm.

#### Section 4. Sale of air guns to individuals under the age of eighteen (18) prohibited.

- a. It shall be unlawful for any person, whose business includes the sale of air guns, to sell or offer to sell give and /or provide, or cause another person to sell, offer to sell, give and/or provide an air gun or ammunition therefore to any individual under the age of eighteen (18) in the County of Nassau.

- b. Any person operating a place of business where air guns are sold or offered for sale shall post in a conspicuous place the following statement: "SALE OF AIR GUNS OR AMMUNITION THEREFOR TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN (18) IS PROHIBITED BY LAW"

- c. Any person who sells or offers air guns for sale, shall place such air guns and ammunition therefore on display only if such items are; (i) contained in a sealed and locked case; (ii) located behind the service counter with access limited to the seller or his agents or employees; or, (iii) stored in any other manner which restricts access to air guns by customers and/or the general public.

#### Section 5. Penalties

- a. Any person who violates any provision of this title shall, for a first offense, be guilty of a violation punishable by a fine of not more than two hundred fifty dollars. A second or subsequent violation shall be a Class B misdemeanor punishable by a fine of not more than five hundred dollars or three months imprisonment, or both.

#### Section 6. Severability

If any clause, sentence, paragraph or subdivision or part of this Article or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Article, or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such judgment shall be rendered.

#### c. Effective date.

This local law shall take effect 120 days after it shall have become a law.

(Added by Local Law 6-2006, signed by the County Executive on May 4, 2006.)

### TITLE 59\*

#### NASSAU COUNTY POET LAUREATE LAW

Section 1. This law shall be known as the Nassau County Poet Laureate Law, which shall appear in the miscellaneous laws as Title 59.

#### Section 2. Legislative Intent

This Legislature finds that the culture and the sense of peace that poetry can bring to the very hectic lives led by the residents of this county are an important element of the well being and enrichment of our lives. Poetry is literary expression in which language is used in a concentrated blend of sound and imagery to create an emotional response. It is as old as the chants first sung around the tribal fires of primitive peoples. The chant/song/poem is what heals the heart and soul. Poetry celebrates the individual word, the sound of language and the rhythm of language.

#### Section 3.

The Nassau County Legislature shall biennially designate a poet laureate for Nassau County, to be honored at the first meeting in April of every two years, and who shall be known as the Nassau County Poet Laureate for the period of April 1<sup>st</sup> through March 30<sup>th</sup> of the

second year following to be selected from a panel to be named by the legislature consisting of the following individuals:

- a. a Nassau County educator who teaches poetry selected by the Nassau County Council of School Superintendents;
- b. an active member of the poetry community named by the County Executive's office;
- c. an active member of the poetry community named by the Presiding Officer of the Nassau County Legislature;
- d. an active member of the poetry community named by the Minority Leader of the Nassau County Legislature;
- e. the Vice President of Academic Affairs of the Nassau County Community College, or his or her designee; and
- f. a member of the Nassau County Library Association designated by said Library Association.

#### Section 4.

The Nassau County Poet Laureate Panel shall, no later than March 1 of the year the poet laureate is to be designated, issue a written report to the Chairperson of the Government Services Committee and to the Clerk of the Nassau County Legislature, identifying the individual chosen by the panel as the poet laureate, and shall include in said report the criteria used in the selection process.

Section 5. The poet laureate shall promote and encourage poetry within the county and shall give two public readings within the county each year.

Section 6. This law shall take effect 60 days after the date it is signed.

(Added by Local Law 7-2006, signed by the County Executive on May 4, 2006.)

\*Note there is an additional title 59 added by Local Law no. 10-2006

### TITLE 59\*

#### ENVIRONMENTAL PROGRAM

Section 1. This law shall appear in the miscellaneous laws as title 59.

##### § 2. Legislative Intent.

The legislature finds that there continues to be a compelling and urgent need to preserve the County's remaining open space, to provide adequate and diverse kinds of parklands and park facilities for County residents for both active and passive recreation, to protect the County's precious water resources whether above or underground, such as aquifers, recharge areas, ponds, streams, estuaries and other bodies of water, and to provide for the cleanup of brownfields within the County.

Development pressure is threatening open space in the County. The County Legislature finds that the preservation of open space is essential to protect the quality of life of County residents, provide a buffer against sprawl, maintain groundwater recharge areas to ensure the quality and quantity of future drinking water supplies, protect natural habitat and sensitive environmental areas, and provide access for residents to woodlands, coastal waterfronts, trails and other natural areas.

The County Legislature finds, further that many parks, recreational and historic facilities within the County are in need of renovation, restoration, and capital improvement, and that it is a county purpose to improve the quality of County parks in order to provide increased recreational opportunities, enhance property values and improve the quality of life for County residents.

Storm water runoff pollution is a threat to the quality of water resources of the County's north and south shores. This condition has been documented by the south shore estuary comprehensive management plan and the comprehensive conservation and management plan for Long Island Sound, which found that non-point source pollution is the primary water quality concern in the south shore estuary reserve and Long Island Sound and its estuaries. In addition, the County is required by the Clean Water Act to develop a strategy for mitigating storm water runoff pollution. This Legislature declares that funding necessary storm water projects, which may include pond rehabilitation and/or dredging projects, and assisting the county in preparing for the new federal regulatory requirements are County purposes and, in addition, constitute purposes contemplated by the New York State and County legislatures when they created the county sewer and storm water resources district in two thousand three.

Surface and coastal waters are also a vital element of the County's quality of life, its environmental resources, and appeal to residents and tourists. This Legislature finds that both the

quantity and quality of the County's water resources are threatened by increased usage and contamination as a result of past and foreseeable future development, so that the protection of the County's water resources is a county purpose necessary for the wellbeing of residents, the health of the environment, and the vitality of the economy.

Pollution and toxic waste have despoiled many parcels of land in the County and made them unfit for development and other use. This Legislature finds that it is the role of municipalities to fund, where practicable, the clean up of the brownfield areas.

This Legislature finds therefore, that it continues to be necessary to fund a rational and fiscally prudent program to further the purposes of preserving open space; acquiring and improving parks, athletic fields and other recreational facilities; restoring and improving park, recreational, and historic assets; mitigating storm water runoff pollution; protecting and improving the County's water resources, including any projects to accomplish such goal and the goal of mitigation of storm water runoff pollution, and remediating brownfields. In connection with each of the above purposes, the County should, to the extent practicable, partner with any other municipality within the County, and the state and federal governments.

### § 3. Definitions.

For purposes of this section, the following words shall have the following meanings: "Active parkland" shall mean parkland that is used for primarily for sports, exercise, entertainment or active play.

"County" shall mean the County of Nassau.

"District" shall mean the Nassau county Sewer and storm Water Resources District, established pursuant to chapter six hundred eighty-five of the laws of two thousand three.

"Environmental bond issue" or "bond issue" shall mean the serial bonds issued by the county or the Finance Authority for the purpose of establishing an environmental program pursuant to this law.

"Environmental program" or "program" shall mean projects funded by serial bonds in any amounts up to a total of one hundred million dollars issued for the purposes set forth in section six of this law. "Environmental program" shall not refer to projects funded by any moneys other than the environmental bond issue.

"Finance authority" shall mean the Nassau County Interim Finance Authority established pursuant to chapter eighty-four of the laws of two thousand or the Nassau County Sewer and Storm Water Finance Authority established pursuant to chapter six hundred eighty-five of the laws of two thousand three, as appropriate.

"Improvement" shall mean an addition made to parkland or an amelioration of the condition of parkland or an amelioration of the condition of an improvement on parkland amounting to more than routine maintenance.

"Natural or scenic resources" shall mean open areas and shall include but not be limited to, agricultural lands, including lands employed for the raising of livestock, defined as open lands actually used in bona fide agricultural production.

"Open space," "open land," or "open area" shall, as set forth in the section two hundred seventy-four of the General Municipal Law, mean any space or area characterized by natural scenic beauty; or where the existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

"Open space purposes" shall mean purposes or projects that involve one or more of the following: (a) the creation or establishment of parks, nature preserves, or recreation areas; (b) the creation or preservation of open space, including agricultural lands and lands used for livestock, animal husbandry, grazing, or care of animals; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge



areas; (f) preservation of undeveloped beachlands or shoreline; (g) creation or establishment of wildlife refuges for the purpose of maintaining native animal species, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of unique or threatened ecological areas; (i) creation or preservation of forested land; (j) preservation of public access to lands for public use including stream rights and waterways; and (k) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

“OSPAC” shall mean the Nassau County Open Space and Parks Advisory Committee.

“Planning Commission” shall mean the Nassau County Planning Commission.

#### § 4. Establishment of environmental program.

Nassau County or the Finance Authority are hereby authorized to issue, appropriate and expend one hundred million dollars in serial bonds of the County of Nassau by means of bonds issued pursuant to duly enacted bond ordinances of the County of Nassau, and all moneys raised pursuant to such bond issues shall be used to implement the environmental program pursuant to this law.

a. The County Legislature may vote on a bond ordinance and corresponding resolution(s) for a project or group of projects in accordance with section seven of this local law.

b. The Treasurer shall deposit the proceeds of all such bonds into one or more accounts designated as environmental program funds, which shall be used only for the purposes, and in the manner, set forth in this Local Law. Such funds may include additional moneys from other sources, including but not limited to, dedicated fees, grants, or any other moneys allowed by law; provided, however that such additional moneys shall not be subject to the limitations set forth in this section.

#### § 5. Dedicated tax and special revenue fund for payment of debt service.

A special revenue fund is hereby established, to commence in the first fiscal year in which debt service must be paid for bonds issued pursuant to the program, for the purpose of payment of debt service for projects authorized pursuant to the program. The county budget for the fiscal year in which debt service is payable on bonds issued pursuant to the program shall include a tax levy dedicated to the payment of debt service for County projects funded by such bond issue, provided that clean water projects pursuant to the program shall be funded by the district and the budget for the district commencing in fiscal year two thousand ten shall include a tax levy to pay the debt service for such clean water projects. The taxes assessed pursuant to this section shall appear as a separate item on the tax bill submitted to property owners. Moneys raised through the tax levies authorized by this subdivision shall be placed in the special revenue fund and shall be used only for payment of such debt service. The County may, in its discretion, and as legally permissible, deposit other revenues into such fund; provided, however, that such other revenues shall not be subject to the limitation contained in this subdivision.

§ 6. Expenditures of the proceeds of the environmental bond issue. The net proceeds raised through the environmental program bond issue may be expended as set forth in this section:

a. Open space preservation. A portion of the net proceeds from the environmental program bond issue shall be expended for the acquisition of real property rights.

(i) All real property purchased in fee under the environmental program pursuant to this subdivision may be limited by deed restriction to future use for only park, recreation, agricultural or open space purposes and may be dedicated as perpetual preservation lands under county law.

(ii) Parcels of land from which development rights or other interests are acquired may remain preserved in perpetuity via a permanent conservation easement or other means that similarly preserves the open space, ecological, water recharge, or scenic value of the parcel, or the agricultural character of the parcel of land.

(iii) The County may enter into agreements with other municipalities within the county, the state, or other entities, as permitted by law, to purchase development rights, conservation

easements or other rights or interests in land for the purposes set forth in this law; provided, however, that the county contribution shall not exceed fifty percent of the total cost of such purchases.

b. Parks expansion and improvement. A portion of the net proceeds from the environmental program bond issue shall be expended for park expansion and improvement, as follows:

(i) Acquisition and improvement of active parkland. A portion of the net proceeds from the environmental program bond issue shall be expended for the acquisition or improvement of land for use as active parklands, except golf courses. In addition to such acquisition or improvement by the County, for purposes of this subparagraph, such acquisition or improvement may also be accomplished through written agreements with municipalities within the County or with a duly incorporated or organized not-for-profit entities to improve the properties for additional space for playgrounds, athletic fields, outdoor concerts, horseback riding or other equine activities, or other community recreational needs; provided, however, that all such agreements shall provide for continued public access to such property; at a minimum allowing free access to all County residents as spectators at sporting events, and providing in lease agreements a mechanism for County residents to maintain reasonable access to facilities when such facilities are not in active use by the contracting municipality or organization. The County may enter into agreements with municipalities within the County to acquire or improve parcels of land pursuant to this subparagraph, or may make grants to such municipalities; provided, however, that the county contribution cannot exceed fifty percent of the total cost of such acquisition or improvement.

(ii) Park renovation and improvement. A portion of the net proceeds from the environmental program bond issue shall be expended for improvements to county park, recreational, museum and historical facilities, and construction of facilities, amenities and other capital improvements to such park, recreational, museum and historical facilities; provided, however, that no moneys from the environmental bond issue shall be expended for the replacement, repair or maintenance of existing park structures or facilities.

c. Clean water projects. A portion of the net proceeds from the environmental program bond issue shall be expended for capital projects of the district that will contain, abate or mitigate storm water carried pollutants that otherwise would impair the quality of the County's north and south shore estuaries. Projects may include, but shall not be limited to, sediment collection basins, storm drain catch basins, drainage swales, and end-of-pipe treatment units, such as swirl-type collectors, and water body rehabilitation, dredging and improvement projects.

d. Brownfield clean-up projects. A portion of the net proceeds from the environmental program bond issue shall be expended for capital projects that will remediate brownfield sites. For the purposes of this provision, "brownfield site" shall have the meaning set forth in section 27-1405 of the New York State Environmental Conservation Law.

e. Preliminary and incidental costs. A portion of the net proceeds from the environmental program bond issue may be used, consistent with the Local Finance Law, for preliminary and incidental costs of the capital projects financed under the environmental program; provided, however, that the County shall only expend the minimum amount necessary for such costs.

#### § 7. Procedure for proposals under the Environmental Program

a. Proposals in furtherance of this program shall be made by the County Executive; provided, however, that such proposals shall not be limited to any proposal or proposals generated in furtherance of any previous environmental program of the County.

b. Any such proposal may be made at any time and shall be transmitted in writing to the Planning Commission and OSPAC for review, evaluation and recommendation. OSPAC shall, within thirty days of receipt of a proposal, complete and transmit its report and recommendations

to the Planning Commission.

c. Not later than seventy-five days following receipt of a proposal from the Environmental Program Advisory Committee, the Planning Commission, shall complete and transmit the findings of such review and evaluation, together with any report and recommendation from OSPAC to the County Executive. The County Executive may introduce the proposal for consideration by the legislature, along with the findings of the Planning Commission and OSPAC; provided, however, that failure by either the Planning Commission or OSPAC to provide such report and recommendations within the time period set forth in this section, shall be deemed to constitute neutral findings and the County Executive may proceed for consideration by the Legislature.

d. Each such proposal and each corresponding bond ordinance shall be subject to the approval of thirteen members of the County Legislature.

§ 8. Annual report. No later than the first day of September of each year in which there are existing funds raised through such bond issue, the County Executive shall report to the County Legislature in writing, detailing the expenditures of such funds, the balance of funds remaining, and the balance of authorized expenditures during the prior year and recommendations for future years.

§ 9. SEQRA Determination. It is hereby determined, based on the recommendation of the Nassau County Planning Commission acting in an advisory capacity to the Nassau County Legislature, the lead agency, and pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 NYECL section 0101 et seq. and its implementing regulations, Part 617 of 6 NYCRR, and Section 1611 of the County Government Law of Nassau County, that this Local Law will not have a significant impact on the environment and that no further environmental review or action is required. A record of the Planning Commission's recommendation of negative declaration for this action shall be maintained in a file, readily accessible to the public, at the office of the Planning Commission.

§ 10. Severability. If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, entity or circumstance involved in the controversy in which such order or judgment shall be rendered.

§ 11. Construction with other laws.

a. This local law shall in no way be construed to limit or restrict the use of funds, or the extent of the environmental program under Local Law No. 14-2004.

b. The proceeds from the environmental program bonds issued pursuant to this Local Law shall not be encumbered unless and until at least ninety percent of the proceeds from the environmental program bonds issued pursuant to Local Law no. 14-2004 have been allocated.

§ 12. Effective date. This local law shall take effect immediately upon the certification by the Nassau County Board of Elections of an affirmative vote by referendum to be held at the general election to be held in November two thousand six, as required by section one hundred fifty-five of the County Government Law of Nassau County.

(Added by Local Law No. 10-2006.)

\*Note: There is an additional title 59 added by local law no. 7 -2006.

## TITLE 61

### MARK SATTLER LAW RESTRICTING THE USE OF MOTORIZED SCOOTERS, ALL-TERRAIN VEHICLES, AND OTHER OFF-ROAD VEHICLES AND REQUIRING TRUTH-IN SELLING

#### Section 1. Short title.

This law shall be known as the Mark Sattler Law, which shall appear in the miscellaneous laws as title sixty-one.

#### Section 2. Legislative Intent.

This Legislature finds that the operation in the County of all-terrain vehicles (“ATVs”), motorized scooters, and other off-highway vehicles poses an unacceptable risk of serious injury and death for County residents and causes economic and environmental damage to public parks, sports facilities, recreation areas, natural habitats and nature preserves. It is the intent of this law to protect the health, safety and welfare of County residents by imposing stricter limits on the use and operation of such vehicles.

This Legislature further finds that consumers frequently are unaware of the legal restrictions on the use and operation of such vehicles when they purchase them, and they may first learn of the rules governing the operation of these vehicles only after encountering efforts by law enforcement to enforce such laws. This law, therefore, requires that consumers be notified at the time of purchase of the laws and regulations restricting the use and operation of ATVs, motorized scooters, and other off-highway vehicles.

#### Section 3. Definitions.

For purposes of this law, the following terms shall have the following meanings:

“All Terrain Vehicle” or “ATV” means an all terrain vehicle or ATV as defined by section twenty-two hundred eighty-one of the New York State Vehicle and Traffic Law.

“County” means the County of Nassau.

“Highway” means any public way, as set forth in New York State Vehicle and Traffic Law section one hundred thirty-four and as defined by New York State Vehicle and Traffic Law section one hundred eighteen.

“Motorized Scooter” shall mean any wheeled device that has handlebars that is designed to be stood or sat upon by the operator, is powered by an electric motor or by a gasoline motor that is capable of propelling the device without human power and is not capable of being registered with the New York State Department of Motor Vehicles. For the purposes of this section, the term motorized scooter shall not include wheelchairs or other mobility aids designed for use by disabled persons, electric powered devices not capable of exceeding fifteen miles per hour or “electric personal assistive mobility devices” defined as self-balancing, two non-tandem wheeled devices designed to transport one person by means of an electric propulsion system.

“Off-highway motorcycle” shall mean a motorcycle which is not equipped in conformity with the provisions of section three hundred eighty-one of the New York State Vehicle and Traffic Law, would not, if properly equipped, qualify as a limited use motorcycle and which is manufactured and sold for operation primarily on off-highway trails or in off-highway competitions and only incidentally operated on public highways.

“Operate” means to ride in or on, other than as a passenger, or use or control the operation of an Off-Highway Vehicle, Motorized Scooter or ATV in any manner regardless of whether or not the Off-Highway Vehicle, Motorized Scooter or ATV is in motion.

“Operator” means every person who operates or is in actual physical control of an Off-Highway Vehicle, Motorized Scooter or ATV.

“Parking area of a shopping center” shall include those areas defined by New York State Vehicle and Traffic Law section one hundred twenty-nine-a.

“Parking lot” shall include those areas defined by New York State Vehicle and Traffic Law section one hundred twenty-nine-b.

“Person” shall mean an individual, corporation, partnership, joint venture, limited liability partnership, limited liability company, or any other business entity.

“Pocket bike” shall mean a motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, having an engine no larger than forty-nine cubic centimeters and with a total vehicle weight of not more than one hundred pounds.

“Point of Sale” shall mean a location in a business dedicated to the sale of Off-Highway Vehicles, Motorized Scooters or ATVs.

“Property” shall mean any real property, land, parkland, preserve or sump owned by the County of Nassau.

“Sidewalk” shall include those areas defined by New York State Vehicle and Traffic Law section one hundred forty-four.

#### Section 4. Prohibitions

##### a. All Terrain Vehicles.

1. No person shall operate an ATV or an off-road motorcycle upon any property of the County of Nassau.

2. No person shall operate an ATV or off-road motorcycle upon private land other than his or her own unless the owner of such land has given written consent to such operator, which written consent the operator must have in his possession while operating such ATV or off-road motorcycle and must produce to any duly sworn peace or police officer, or other law enforcement officer, upon request of such officer.

##### b. Motorized Scooters.

1. No person shall operate a motorized scooter or pocket bike upon any property of the County.

2. No person shall operate a motorized scooter upon any highway, parking area of a shopping center, parking lot, sidewalk, street, or any other public area within the County.

#### Section 5. Sales Disclosure and Advertising.

Any business organization, including, but not limited to any individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity of any kind that sells or offers for sale an ATV, motorized scooter, pocket bike, or off-highway motorcycle to any person within the County of Nassau for compensation, shall provide to each buyer a copy of this local law, and in the case of the sale of an ATV, a copy of Article forty-eight-c of the New York State Vehicle and Traffic Law containing the rules for the operation of ATVs, and shall conspicuously post at the point of sale in letters not less than two inches in height on a contrasting background, a statement of the legal restrictions on the operation of such ATV, motorized scooter, pocket bike, or off-highway motorcycle in the County, including but not limited to the words “The operation of All Terrain Vehicles, motorized scooters, off-highway motorcycles, and pocket bikes is prohibited on Nassau County property.” Any buyer of an ATV, motorized scooter, off-highway motorcycle or pocket bike shall sign an acknowledgement that he or she received such information at the time of purchase, which acknowledgement shall be maintained and kept on file by such business organization for a period of five years from the date of sale. Business organizations advertising in the printed media the sale of any ATV, motorized scooter, off-highway motorcycle or pocket bike or any other vehicle covered by this Law shall include in any such printed advertising the following statement: “New York State and Nassau County prohibit use of ATVs, motorized scooters, pocket bikes and other off-highway motorcycles on County property”

#### Section 6. Penalties.

a. A violation of subdivision a of section four of this local law shall be punishable by a fine of not less than five hundred fifty dollars nor more than fifteen hundred dollars. A second violation of such subdivision occurring within five years of the date of a first violation shall be punishable by a fine of not less than fifteen hundred dollars nor more than three thousand dollars. A third and any subsequent violation of such subdivision occurring within such five -year period shall be punishable by a fine of not less than five thousand dollars.

b. A violation of subdivision b of section four of this local law shall be punishable by a fine of not less than one hundred fifty dollars nor more than three hundred dollars. A second violation of such subdivision occurring within five years of the date of a first violation shall be punishable by a fine of not less than two hundred dollars nor more than five hundred dollars. A third and any subsequent violation of such subdivision occurring within such five -year period shall be punishable by a fine of not less than five hundred dollars nor more than seven hundred dollars.

c. A violation of section five of this local law shall be punishable by a fine of up to fifteen hundred dollars, which may be recovered following notice and an opportunity to be heard in a proceeding before the Commissioner of Consumer Affairs.

#### Section 7. Impoundment and Seizure

a. Upon reasonable cause to be believe that the operation of an ATV, off-road motorcycle, motorized scooter or pocket bike is in violation of section four of this law, such vehicle shall be subject to immediate seizure and impoundment by a duly sworn peace or police officer, acting pursuant to his or her official duties.

b. Any ATV, off-road motorcycle, motorized scooter or pocket bike seized pursuant to this law shall be impounded and stored for safekeeping by the law enforcement agency affecting the seizure. That agency may assess an administrative processing fee of two-hundred and fifty dollars (\$250) and a storage fee of five dollars (\$5) per day thereafter.

c. Any ATV, off-road motorcycle, motorized scooter or pocket bike seized and impounded pursuant to this law may be claimed by either the owner of such vehicle, who is at least 18 (eighteen) years of age or a parent or legal guardian of any such owner who is under eighteen (18) years of age.

d. The law enforcement agency affecting a seizure under this law shall notify the owner or his or her parent or legal guardian of such seizure, by first class mail, within 72 hours of the seizure.

e. Law enforcement agencies effecting seizures and impoundments made pursuant to this law shall promulgate regulations regarding the storage and release of any such vehicles.

#### Section 8. Applicability.

a. Nothing in this article or Law shall apply to any Moped, defined by the NY State Vehicle and Traffic Law as a limited use motorcycle containing two or three wheels and designed to travel at a low speed, provided such Moped complies with the requirements of the NY State Vehicle and Traffic Law for lawful use within New York State.

b. This law shall apply to all actions occurring on or after the effective date of this law.

#### Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application t the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

#### Section 10. Reverse Preemption

This law shall be null and void on the day that state or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law. The County Legislature may determine via resolution whether or not identical or substantially similar state or federal legislation has been enacted for the purposes of triggering the provisions of this section.

Section 11. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby, finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(21) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) OF the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Nassau County Council on Environmental Quality is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 12. Effective Date.

This law shall take effect ninety days after it shall become a law.

## TITLE 62 ULTRA LOW SULFUR DIESEL FUEL LAW

Section 1. This law shall be known as the Ultra Low Sulfur Diesel Fuel Law and shall appear in the miscellaneous laws as title sixty-two.

§ 2. Definitions.

As used in this local law, the following terms shall have the following meanings:

“Best available retrofit technology” means technology, verified by the EPA for reducing the emission of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies, as set forth in section five of this local law, which is applicable to the particular engine and application. Such technology shall also, at a reasonable cost, achieve the greatest reduction in emissions of nitrogen oxides at such particulate matter reduction levels and shall in no event result in a net increase in the emissions of either particulate matter or nitrogen oxides.

“Commissioner” shall mean the Commissioner of the Department of Public Works.

“County contractor” means any person who enters into an agreement or contract with the County valued at more than one hundred fifty thousand dollars to perform County work or any person who enters into an agreement or contract with such person to perform County work.

“County department” means any department of County government that uses diesel-powered vehicles in any capacity.

“County” means County of Nassau.

“County work” means to provide labor, services, material and/or equipment which traditionally has been provided by the government of the County through County employees or contractors, except that it shall not mean labor, services, materials and equipment provided by a common carrier; a utility company; a shipping company (including overnight delivery companies); or a manufacturer or delivery company which delivers materials or equipment to County government.

“EPA” means the United States Environmental Protection Agency.

“Gross vehicle weight rating” means the value specified by the manufacturer of a motor vehicle model as the maximum design loaded weight of a single vehicle of that model.

“Motor vehicle” means a vehicle owned by the County and operated or driven upon a public highway which is propelled by any power other than muscular power, except electrically-driven

mobility assistance devices operated or driven by a person with a disability, provided, however, that this term shall not include vehicles that are specially equipped for emergency response by the fire commission, the department of emergency management, or the sheriff's department.

"Non-road diesel vehicle" means a motor vehicle powered by a diesel engine fifty horsepower or greater, including but not limited to excavators, backhoes, cranes, compressors, bulldozers, and similar equipment, but not including a vehicle used for competition.

"On-road diesel vehicle" means a motor vehicle powered by a diesel engine that is used to transport persons or property on a street or highway.

"Person" means any individual, partnership, firm, company, association, joint stock association, corporation or other like organization.

"Reasonable cost means that such technology does not cost greater than thirty percent more than other technology applicable to the particular engine and application that falls within the same classification level for diesel emission control strategies, as set forth in section five of this local law, when considering the cost of the strategies, themselves, and the cost of installation.

"Specially equipped vehicle" means a motor vehicle defined as specially equipped pursuant to rules and regulations developed and approved by an appropriate department of county government designated by the county executive, and adopted by the County legislature.

"Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

### § 3. Use of ultra low sulfur diesel fuel required.

a. All on-road diesel vehicles and non-road diesel vehicles owned, leased, or operated by the County, and all such vehicles used by a County contractor to do County work shall be powered by ultra low sulfur diesel fuel.

b. All on-road diesel vehicles and non-road diesel vehicles owned, leased, or operated by the County, and all such vehicles used by a County contractor to do County work and have a gross vehicle weight rating of more than eight thousand five hundred pounds shall utilize the best available retrofit technology or be equipped with an engine certified to the applicable two thousand seven EPA standard for particulate matter as set forth in section 86.007-11 of title forty of the code of federal regulations or to any subsequent EPA standard for such pollutant that is at least as stringent, pursuant to the following schedule:

Twenty five percent of all such motor vehicles by January 1, 2009;

Fifty percent of all such motor vehicles by January 1, 2011;

One hundred percent of all such motor vehicles by January 1, 2013.

(1) This subdivision shall not apply to any vehicle subject to a lease or public works contract entered into or renewed prior to the effective date of this section.

### § 4. County executive discretion regarding technology.

a. The county executive shall make determinations, and shall publish a list containing such determination, as to the best available retrofit technology to be used for each type of diesel fuel-powered motor vehicle to which this section applies. Each such determination shall be reviewed and revised, as needed, on a regular basis, but in no event less often than annually.

b. The county executive may determine that a technology, whether or not it has been verified by the EPA, may be appropriate to test, on an experimental basis, on a particular type of diesel fuel-powered motor vehicle owned or operated by a county department. The county executive may authorize such technology to be installed on up to three of such type of motor vehicle. Any motor vehicle on which such technology is installed may be counted for the purpose of meeting the requirements of subdivision b of section three of this local law. Such technology shall not be required to be installed on other motor vehicles of the same type and shall be subject to the provisions of paragraph d of this section.



c. Any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall utilize the best available technology for reducing the emission of pollutants for diesel powered on-road vehicles and non-road vehicles and all contractors in the performance of such contract shall comply with such specification.

d. No county department or county contractor shall be required to replace best available retrofit technology or experimental technology utilized for a diesel fuel-powered motor vehicle in accordance with the provisions of this section within three years of having first utilized such technology for such vehicle, except that technology that falls within level four as set forth in section five of this law, shall not be required to be replaced until it has reached the end of its useful life.

#### § 5. Classification of diesel emission control strategies.

The classification levels for diesel emission control strategies are as follows, with level four being the highest classification level:

Level Four – strategy reduces diesel particulate matter emissions by eighty-five percent or greater or reduces engine emissions to less than or equal to .01 grams diesel particulate matter per brake horsepower-hour;

Level Three – strategy reduces diesel particulate matter emissions by between fifty and eighty-four percent;

Level Two - strategy reduces diesel particulate matter emissions by between twenty-five and forty-nine percent;

Level One - strategy reduces diesel particulate matter emissions by between twenty and twenty-four percent.

#### § 6. Contractor violations.

The Commissioner is authorized to enforce the provisions of this section.

a. Any contractor who violates any provision of this section shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such contractor for failure to comply with this section.

b. No contractor shall make a false claim with respect to the provisions of this section to any county agency. Where a contractor has been found to have done so, such contractor shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such contractor in association with having made such false claim.

#### § 7. Procedure when ultra-low sulfur diesel fuel is unavailable.

The county executive shall issue a written determination that permits the use of diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this law if ultra low sulfur diesel fuel is not available to meet the needs of county departments to fulfill the requirements of this law. Such determination shall expire after six months if such lack of availability persists, but in no event shall be in effect after January first, two thousand eight

#### § 8. Waiver.

The county executive may issue a waiver for the use of ultra low sulfur diesel fuel where a county department makes a written finding, approved in writing by the county executive, that a sufficient quantity of ultra low sulfur diesel fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to section seven of this law, is not available to meet the requirements of this law, provided that such department, to the extent practicable, shall use whatever quantity of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available for its diesel fuel-powered motor vehicles. Any waiver issued pursuant to this section shall expire after two months, unless

the county department renews the finding, in writing, and the county executive approves such renewal, in writing.

§ 9. Report to county executive and legislature.

a. Not later than January first, two thousand eight, and not later than January first of each year thereafter, the appropriate department or departments of county government, as determined by the county executive, shall submit a report to the county executive and legislature of Nassau county regarding, among other things, the use of ultra low sulfur diesel fuel and the use of the best available retrofit technology by diesel fuel-powered motor vehicles owned operated by county departments during the immediately preceding calendar year. The information contained in this report shall include, but not be limited to, for each county department: (i) the total number of diesel fuel-powered motor vehicles owned or operated by such department; (ii) the number of such motor vehicles that were powered by ultra low sulfur diesel fuel; (iii) the total number of diesel fuel-powered motor vehicles owner or operated by such department having a gross vehicle weight rating of more than eight thousand five hundred pounds; (iv) the number of such motor vehicles that utilized the best available retrofit technology , including a breakdown by motor vehicle model, engine year, and the type of technology used for each vehicle; (v) the number of such motor vehicles that are equipped with an engine certified to the applicable two thousand seven EPA standard for particulate matters as set forth in section 86-007-11 of title forty of the code of federal regulations or to any subsequent EPA standard for particulate matter that is at least as stringent; (vi) the number of such motor vehicles that utilized technology in accordance with paragraph two of subdivision c of this section and the results and analysis regarding the testing off such technology; and (vii) all waivers , findings, and renewals of such findings, issued pursuant to sections seven and eight of this law that, for each waiver, shall include, but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated by such department; specific information concerning the availability of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to section seven of this law; and detailed information concerning the department's efforts to obtain ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to sections seven or eight of this law

b. Where a determination is in effect pursuant to section seven or eight of this law, information regarding diesel fuel that has a sulfur content of no more than thirty parts per million shall be reported wherever information is request for ultra low sulfur diesel fuel pursuant to paragraph on e of this section.

c. the report due January first, two thousand eight in accordance with paragraph a of this section shall only include the information required pursuant to subparagraphs (i), (ii), and (vii) of such paragraph.

§10. Inapplicability.

This law shall not apply:

a. when federal or state funding precludes the county from imposing the requirement of this law; or

b. to purchases that are emergency procurements pursuant to the County charter or any local law allowing for such emergency procurements.

c. where such applicability would interfere with the purchase, lease or operation of emergency response vehicles operated by the Department of Emergency Management or the Nassau County Police Department.

d. to a diesel powered non-road vehicle where: 1) the commissioner certifies that the best available technology for reducing the emission of pollutants as required herein is unavailable for such vehicle, in which case such agency or contractor shall use whatever technology is available

and appropriate for such vehicle that the commissioner approves for reducing the emission of pollutants; or 2) the vehicle is used for fewer than five calendar days per contract; or 3) the commissioner issues a written waiver based upon a finding that the use of the best available technology for reducing the emission of pollutants may present a hazard or threat to the safety of the operator, other workers or members of the public.

§ 11. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 12. SEQRA Determination

It is hereby determined, based on the recommendation of the Nassau County Planning Commission acting in an advisory capacity to the Nassau County Legislature, the lead agency, and pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 NYECL section 0101 et seq. and its implementing regulations, Part 617 of 6 NYCRR, and Section 1611 of the County Government Law of Nassau County, that this Local Law will not have a significant impact on the environment and that no further environmental review or action is required. A record of the Planning Commission's recommendation of negative declaration for this action shall be maintained in a file, readily accessible to the public, at the office of the Planning Commission.

§ 13. Effective date.

This local law shall take effect immediately.